

Supreme Court of the United States

OCTOBER TERM, 1966

No. 216

NATIONAL LABOR RELATIONS BOARD,
PETITIONER

vs.

ALLIS-CHALMERS MANUFACTURING COMPANY,
ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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[fol. 1]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

13th Region

TRANSCRIPT OF PROCEEDINGS—Tuesday, June 11, 1963

[fol. 2] MR. RASKIN: Now we know and we are not naive about these matters, that where there are requirements for union membership as the condition of employment, unfortunately and that even is true where there are [fol. 3] no requirements of union membership as the condition of employment—unfortunately the great mass of workers take little interest in union affairs. This unfortunate situation probably is no different than in any other fraternal group. The attendance record at membership meetings is low. The great interest in keeping alive the union status is maintained usually by a handful of people. Therefore the imposition of a sanction such as, "You are no longer a member of this union," means nothing and is of no consequence and probably could well be a relief to some people because it wouldn't make it necessary for them even to so much as come up to a union meeting at all.

If our constitution and the constitution of the international union which is part of this record means anything and if it is intended as a guide to the conduct of its members, it can only be enforced through the processes as was done in these cases.

[fol. 4]

TXD-52-64
Milwaukee, Wis.BEFORE THE NATIONAL LABOR RELATIONS
BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

Case No. 13-CB-1066

LOCAL 248, UNITED AUTOMOBILE, AEROSPACE AND AGRI-
CULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-
CIO¹*and*

ALLIS-CHALMERS MANUFACTURING COMPANY

Case No. 13-CB-1222

LOCAL 248, UNITED AUTOMOBILE, AEROSPACE AND AGRI-
CULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-
CIO*and*

ALLIS-CHALMERS MANUFACTURING COMPANY

Case No. 13-CB-1408
(Old Case No. 18-CB-177)LOCAL 401, UNITED AUTOMOBILE, AEROSPACE AND AGRI-
CULTURE IMPLEMENT WORKERS OF AMERICA, AFL-
CIO*and*

ALLIS-CHALMERS MANUFACTURING COMPANY

George Graf, Esq., and Gerry M. Miller, Esq., for the
General Counsel.Raskin, Zubrensky & Padden, of Milwaukee, Wis., by
Max Raskin, Esq., for Respondents.¹ The caption of the case is here corrected to reflect the full name
of the International Union, which will hereinafter be referred to
as UAW.

Quarles, Herriott & Clemons, of Milwaukee, Wis., by John G. Kamps, Esq., and James A. Urdan, Esq.; John L. Waddleton, Esq., and Edward Welch, Esq., both of Milwaukee, Wis.; for the Charging Party.

Before *Harold X. Summers*, Trial Examiner.

TRIAL EXAMINER'S DECISION—January 31, 1964

This case was heard upon the amended complaint² of the General Counsel of the National Labor Relations Board, herein called the Board, alleging that Local 248, UAW, herein called Respondent 248, and Local 401, UAW, herein called Respondent 401, had engaged in and were engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the National Labor Relations Act, herein called the Act. Respondents' answer to [fol. 5] the amended complaint admitted some of its allegations and denied others; in effect, it denied the commission of any unfair labor practices. Pursuant to notice, a hearing was held before the undersigned Trial Examiner, Harold X. Summers, at Milwaukee, Wisconsin, on June 11, 1963. All parties were afforded full opportunity to examine and cross-examine witnesses, to argue orally, and to submit briefs. Briefs filed by the General Counsel, Respondents, and the Charging Party, and a "reply brief" filed by Respondents, have been fully considered.

Upon the entire record in the case,³ I make the following:

² The original charge in Case No. 13-CB-1066 was filed on May 31, 1961; in 13-CB-1222, on May 22, 1962; and in 13-CB-1408 (then numbered 18-CB-177) on May 22, 1962. An order of consolidation of 13-CB-1222 and 13-CB-1408, a complaint, and a notice of hearing were issued on April 12, 1963; and an order of further consolidation of all three cases, an amended complaint, and a new notice of hearing were issued on May 15, 1963.

³ On September 13, 1963, I issued an order to show cause why the transcript should not be corrected in specified respects. No good cause to the contrary having been shown, the corrections indicated in the order to show cause, which is received in evidence as Trial Examiner's Exhibit 1, are hereby ordered made.

Findings of Fact

I. Commerce

The Charging Party, Allis-Chalmers Manufacturing Company, herein called the Employer, is a Delaware corporation, with its principal office and place of business at West Allis, Wisconsin. Engaged in the manufacture, sale and distribution of basic industrial equipment, farm and construction machinery, electrical equipment, food processing machinery, and related products, it operates plants and facilities in the States of Alabama, California, Illinois, Indiana, Iowa, Massachusetts, Missouri, Ohio, Pennsylvania, and Wisconsin, among them plants at West Allis and La Crosse, Wisconsin (hereinafter called the West Allis Works and the La Crosse Works, respectively).

During each of the calendar years 1961 and 1962, representative periods, the Employer, in the course and conduct of its business operations at the West Allis Works and the La Crosse Works, purchased and received directly from points outside the State of Wisconsin supplies and materials valued at in excess of \$500,000; and sold and shipped directly to points outside the State of Wisconsin finished products valued at in excess of \$500,000.

The Employer is an employer engaged in commerce within the meaning of the Act.

II. The Unions

Respondent 248 and Respondent 401 are labor organizations within the meaning of the Act.

III. The alleged unfair labor practices

A. *Background and chronology of events*

At all times material herein, Respondent 248 and Respondent 401 have been the exclusive bargaining representatives of appropriate bargaining units—composed,

* No witnesses were offered. All testimony was presented in the form of stipulations by the parties, supported or explained by documentary material. The findings recited herein, therefore, are based upon the pleadings and the stipulations.

generally speaking, of nonsupervisory production and maintenance employees—at the West Allis Works and La Crosse Works respectively. The working conditions of each unit have been governed by separate collective-bargaining contracts between the Employer and the respective bargaining representatives, which contracts have contained union-shop clauses. For the purposes of this case, it has been stipulated and I find, that all employees [fol. 6] who had completed their periods of probation were members of Respondent 248 or Respondent 401, whichever was appropriate.⁵

At the termination of the 1955-58 contract at the West Allis Works, Respondent 248 engaged in an economic strike in support of new contract demands, which strike lasted from February 2 through April 20, 1959. During the strike, the Employer attempted to operate the plant, and approximately 175 employees—of a unit of 7,400—worked on one or more days during the strike despite the presence of the picket line.

On or about February 24, 1959, Respondent 248 sent a letter to each member who, according to its information, had crossed the picket line to work at the West Allis plant, calling his attention to the fact that his action was in violation of the Constitution and Bylaws of the UAW and the Local, constituted conduct unbecoming a union member, and subjected him to a fine of up to \$100 for each such day's activity; and it expressed the hope that the addressee would desist from the conduct complained of. Between February 2 and June 30, 1959, formal charges were filed with Respondent 248 against those who had worked during the strike, alleging that, by their actions, they had engaged in conduct unbecoming a union member, in violation of the UAW Constitution. Due notice having been served upon the charged members, hearings on the charges were conducted by Trial Committees between July 7 and August 19, 1959.⁶ Reports by the Trial Com-

⁵ In the absence of any contentions to the contrary, I find that all relevant union-security provisions were lawful.

⁶ One hundred fifty-five of the accused were tried by one Trial Committee, 17 by another. Apparently, only eight appeared in person, but all were represented by legal counsel.

mittees, finding 172 members guilty of conduct unbecoming a union member and assessing fines of from \$20 to \$100, were approved by the Local membership on September 19, 1959. By letter dated September 18, 1959, Respondent 248 made a demand upon each fined member for payment of his fine; on October 6, 1960, it reminded each fined member of the obligation, notified him of the outcome of a Wisconsin Supreme Court case on the subject of union fines, and again asked for payment; on April 21, 1961, it notified each fined member of the action of the United States Supreme Court with respect to the Wisconsin case above mentioned and warned that a continued failure to pay the fine owed would result in the case being turned over to counsel "for civil suit."

Meanwhile, a similar situation existed at the LaCrosse Works. Respondent 401, the bargaining agent there, engaged in an economic strike over the terms of a new collective-bargaining contract from February 2 to April 19, 1959. Here again, certain union members, two in number, chose to cross the picket line and to work for the Employer during the course of the strike. They too were charged with conduct unbecoming a union member, given a hearing before a Trial Committee, and, pursuant to an approval of the Committee report by the Local membership on July 11, 1959, were fined \$100 each.

Respondents subsequently took steps toward collection of the fines by court action. On or about August 29, 1961, Respondent 248 took a "pilot case" to court. It filed suit in Milwaukee County Court, Civil Division, against Benjamin Natzke, one of those at West Allis who had been fined \$100. The case came up for hearing in October 1962, and, on April 26 1963, the trial court found for the plaintiff. Notice of appeal to the Circuit Court, Milwaukee County, was filed, which appeal, at the time of this hearing, was pending. Likewise, on or about May 15, 1962, Respondent 401 filed suit against the two LaCrosse employees who had been fined. One of the suits

* A summary list of fined members attached to a written stipulation contains the names of 173 persons. The variance is immaterial in this matter.

was dropped less than a month later, but the other was still pending at the time of this hearing.⁸

[fol. 7] Meanwhile, history repeated itself in connection with negotiations for new contracts early in 1962. Once again, Respondent 248 engaged in an economic strike, lasting from February 26 to March 4, 1962; once again, a number of employee-members—this time, approximately 30 of the 5,500 then employed in the West Allis unit—worked on one or more days during the strike; once again, beginning on April 11, 1962, there were “warning” letters, the filing of charges of conduct unbecoming a union member, a trial,⁹ and—pursuant to a Local membership vote on August 5, 1962—the assessment of fines against 29 members, 6 of whom had been fined in 1959.¹⁰ At the LaCrosse Works, there was a strike from February 26 to March 5, 1962; four members—out of 625—crossed the picket line; charges were filed during the month of March; and the report of the Trial Committee, fining each of the four \$100, was approved by the Local membership on June 7, 1962.

As of the date of this hearing, 20 of the members fined by Respondent 248 had paid all or part of the fines assessed against them; the rest, plus all 6 members fined by Respondent 401, had made no payments.

During the entire relevant period, the members who were fined in either 1959 or 1962 continued to be employed by the Employer in one or the other of the bargaining units involved herein; neither Respondent made demands on the Employer to discharge or otherwise to affect the employment status of any of them. None of them has been dropped from membership in one or the

⁸ Reasons are unspecified herein.

⁹ Eight accused members appeared in person. Two of the eight represented themselves; the rest, including those who did not appear, were represented by legal counsel.

¹⁰ In addition, the charges against one person were dismissed for lack of proof; those against two were “stricken” because the two were not union members. The 29 were fined from \$35 to \$100 each; with respect to 6 of these, there were provisions for remission of part or all of the fines conditioned upon certain required attendance at future local meetings.

other of Respondent Locals, and none of them has resigned or otherwise terminated his union membership except, perhaps, in connection with a termination of employment or for other reasons irrelevant hereto.

B. Discussion and conclusions

The amended complaint alleges that Respondents' actions in imposing fines upon employees because they worked for the Employer during the 1959 and 1962 strikes, in demanding payment of such fines, and in threatening the institution of and instituting civil proceedings for the collection thereof constituted violations of Section 8(b) (1) (A) of the Act.¹¹ Respondents deny that their conduct is violative of the section.¹²

[fol. 8] Section 8(b) (1) (A) provides:

It shall be an unfair labor practice for a labor organization or its agents . . . to restrain or coerce . . . employees in the exercise of their rights guaranteed in Section 7, provided, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

¹¹ With respect to Respondent 401, the allegations of the complaint were confined to developments arising out of the 1962 strike only.

¹² Respondents, in argument and briefs, interpose a number of defenses above and beyond the merits of the case: (1) Because of procedural delays herein, the General Counsel is barred by laches from proceeding on Charge No. 13-CB-1066; (2) proceedings with respect to any conduct arising out of the 1959 strike are barred by the 6-month limitation contained in Section 10(c); and (3) the Board should not proceed in view of provisions in the contracts creating a collective-bargaining forum for disposing of these matters. These defenses are rejected; (1) Laches does not apply against the United States Government (*W. C. Nabors d/b/a W. C. Nabors Company*, 134 NLRB 1078, 1079, enf. — F. 2d — (C.A. 5, 1963)); (2) where, as here, implementing action is taken within the 6-month period, Section 10(c) does not bar the proceeding (cf. *Bryan Manufacturing Company*, 362 U.S. 411); and (3) the Board's authority to remedy unfair labor practices is paramount to other available means of adjustment (see Section 10(a) of the Act).

In the recently-issued *Wisconsin Motor* case,¹³ the Board comprehensively discussed the applicability of Section 8(b)(1)(A) to the imposition of union fines on members for infraction of union rules. The Board concluded that, even if the reach of 8(b)(1)(A) might—as contended by General Counsel in that case¹⁴—conceivably go beyond “union organizational tactics tinged with violence, duress, or reprisal,”¹⁵ it was “nonetheless evident that internal union disciplines were not among the restraints intended to be encompassed by the Section.” Thereupon, a Board majority approved the Trial Examiner’s determination that the actions complained of in the case—a union’s assessment of fines against members who had violated a union rule relating to “ceilings” on production for an employer and its institution of lawsuits to recover the amounts of such fines—were not the kinds of activity with which Section 8(b)(1)(A) is concerned. I am convinced, and I find, that there is no relevant difference between a union’s action directed against members who violate a union rule against crossing their own picket line and action directed against members who produce more than a specified amount; if anything, it would appear that the former is more justified than the latter.

Furthermore, in the *Wisconsin Motor* case above referred to, the Board noted that, even if the acts there complained of were the type of restraint or coercion within the ambit of the section, they were protected by its proviso. In the Board’s view, the allusion to “rules with respect to the acquisition or retention of membership” should not be so narrowly construed as to permit a union to expel a member for violation of a union bylaw but not to fine him for the same infraction without expelling him, or to enforce payment of a fine by expulsion but not

¹³ *Local 283, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO (Wisconsin Motor Corporation)*, 145 NLRB No. 109, decided January 17, 1964.

¹⁴ Citing *International Ladies’ Garment Workers’ Union v. N.L.R.B. (Bernhard-Altman)*, 366 U.S. 731, 738.

¹⁵ Quoted from *N.L.R.B. v. Drivers, Chauffeurs, and Helpers, Local 639 (Gurtis Brothers)*, 362 U.S. 279, 286.

by a suit for collection. Whatever the views of others,¹⁶ the history of the passage of Section 8(b)(1)(A) demonstrated to the Board that Congress was more concerned with placing restrictions on a union's right to expel than to fine members.

Finally (in the same decision), the Board took note that Congress, aware of the Board's treatment of Section 8(b)(1)(A) vis-a-vis unions' internal affairs, did not thereafter indicate that a broader interpretation was intended or desired. Rather, in 1959, it enacted a fairly comprehensive code governing certain of the internal affairs of labor organizations, jurisdiction to enforce which was placed with the Federal Courts, not the Board.

[fol. 9] The instant situation is governed by the *Wisconsin Motor* case. Its only distinction—there, the fine was for exceeding production ceilings; here, it was for crossing a union-authorized picket line—is one without a difference. Both cases involve the infraction of an internal union rule; in both cases, the union rule “relates to” a condition of employment; in neither case is there an attempt to bring about a termination of an employment relationship. In this connection, the General Counsel and Employer urge that *employment* was here involved, and that, therefore, the matter goes beyond “internal union affairs.” A like argument was made in *Wisconsin Motor* by the dissenting Board Member; the answer is that given therein by the majority:

Our dissenting colleague argues forcefully that the proviso to Section 8(b)(1)(A) permits the imposition of union rules on employees as *union members*, but does not apply to the enforcement of rules against employees as *employees*. Proceeding from this premise, the dissenting opinion then finds that the subjects of production and wages are “matter clearly related to *employment*, and not to *membership*” But the conclusion does not follow the distinction. Obviously, production and wages are related to jobs.

¹⁶ Respondents herein, it is urged by the General Counsel and Employer, regarded the imposition and collection of fines as a more potent weapon than expulsion.

Jobs are related to employees and employees may, if they so desire, be union members. A union rule that a *member* is subject to a fine if he exceeds a production ceiling does not mean that he is subject to such a fine as an *employee*. Nor does it mean that his employment status is affected so long as the Union does not attempt to exact payment of the fine by pressure on his employer or discrimination in his job opportunities.

It should not need saying that unions exist for the purpose of collective bargaining with respect to wages, hours, and conditions of employment. 'Necessarily, their constitutions reflect this basic purpose. In a sense, virtually all union rules affect a union member's employment.

But the Board has not been empowered by Congress to police a union decision that a member is or is not in good standing or to pass judgment on the penalties a union may impose on a member so long as the penalty does not impair the member's status as an employee. Our dissenting colleague's view would require the Board to sit in judgment on union standards of conduct for its members even though such standards are not enforced by threats affecting the member's job tenure or job opportunities. Whether or not the Union's rule in this case is desirable or equitable is a matter we need not and do not decide. It is sufficient, in our view, that the Union deliberately restricted the enforcement of its rule to an area involving the status of a member as a *member* rather than as an *employee*.

I find, in short, that the General Counsel has failed to demonstrate by a preponderance of the evidence (1) that Respondents restrained or coerced employees in the exercise of their rights guaranteed in Section 7 within the meaning of Section 8(b)(1)(A), and (2) assuming, without finding, that such restraint or coercion existed, that they were not protected in their right to prescribe their own internal rules.

Upon the basis of the foregoing factual findings and conclusions, I come to the following:

Conclusions of Law

1. Respondent 248 and Respondent 401 are labor organizations within the meaning of Section 2(5) of the Act.

[fol. 10] 2. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. Neither Respondent 248 nor Respondent 401 has engaged in or is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record of the case, I recommend that the amended complaint be dismissed in its entirety.

Dated at Washington, D. C. Jan 31 1964

/s/ Harold X. Summers
Trial Examiner

[fol. 11]
149 NLRB No. 10

D-6138
Milwaukee, Wisconsin

BEFORE THE NATIONAL LABOR RELATIONS
BOARD

Case No. 30-CB-1
(Old Case No. 13-CB-1066)

LOCAL 248, UNITED AUTOMOBILE, AEROSPACE AND AGRI-
CULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO

and

ALLIS-CHALMERS MANUFACTURING COMPANY

Case No. 30-CB-4
(Old Case No. 13-CB-1222)

LOCAL 248, UNITED AUTOMOBILE, AEROSPACE AND AGRI-
CULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO

and

ALLIS-CHALMERS MANUFACTURING COMPANY

Case No. 30-CB-5
(Old Case No. 13-CB-1408)

LOCAL 401, UNITED AUTOMOBILE, AEROSPACE AND AGRI-
CULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO

and

ALLIS-CHALMERS MANUFACTURING COMPANY

DECISION AND ORDER—October, 23, 1964

On January 31, 1964, Trial Examiner Harold X. Summers issued his Decision in the above case, finding that the Respondents had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed, as set forth in his Decision attached hereto. Thereafter, the Respondents and the Charging Party filed exceptions to the Trial Examiner's Deci-

sion and supporting briefs. At the request of the Charging Party, the Board granted oral argument herein by Notice of Hearing dated June 9, 1964. The hearing was held on July 9, 1964, and all parties participated in the argument. In addition, counsel for the American Federation of Labor and Congress of Industrial Organizations participated in the argument and filed a brief as *amicus curiae* and counsel for the National Association of Manufacturers filed a brief as *amicus curiae*.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Decision and the entire record in this case, including the exceptions and briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[fol. 12] Each Respondent is a local of the United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, and, for a number of years, has represented production and maintenance employees of the Allis-Chalmers Manufacturing Company, hereinafter referred to as the Employer. Local 248 has been the representative at West Allis, Wisconsin, and Local 401 has had such status at LaCrosse, Wisconsin. From February 2 to approximately April 20, 1959, both Respondents conducted economic strikes against the Employer in support of new contract demands. At the West Allis Works, approximately 175—out of a unit of 7400—crossed the picket line and worked during the strike. At the LaCrosse Works, 2 employees crossed the picket line to work.

Each Respondent then began internal union proceedings against those members who had crossed the picket lines, charging them with violation of the International Constitution and By-Laws. These proceedings resulted in the imposition of fines ranging from \$20 to \$100 against 174 members. The Respondent began a "test case" in the state courts to collect the fines imposed on one member. Judgment in the trial court was for the Respondent and an appeal from this judgment was pending at the time of the hearing herein.

In 1962, each Respondent again called an economic strike against the Employer in support of new contract

demands. The 1962 strikes lasted from February 26 to approximately March 5. Once again, some members of the Respondents crossed the picket lines and worked—30 out of 5500 at West Allis and 4 out of 625 at LaCrosse. Again, after internal union proceedings, fines were imposed.

As of the date of the instant hearing, 20 of the members had paid the fines in whole or in part, while the rest of the fined members had made no payments. No effort was made by the Respondents to affect the employment status of any of the fined members and they continued to be employed by the Employer throughout the period of the dispute. Nor was any effort made by the Respondents to terminate the union membership of any of the fined employees.

[fol. 13] The complaint, as amended, alleged that the Respondents, by imposing fines on members because they worked during the 1959 and 1962 strikes, by demanding payment of such fines, and by threatening to and instituting court proceedings to collect such fines, violated Section 8(b)(1)(A) of the Act. The Trial Examiner recommended dismissal of the complaint on the ground that the instant case is governed by *Wisconsin Motor Corporation*.¹ We agree.

In the *Wisconsin Motor* case, a union fined members who had exceeded production ceilings set by a union rule which was designed to limit incentive earnings. The Board found that such fine was protected by the proviso to Section 8(b)(1)(A) of the Act, which states:

[T]his paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

We pointed out there, after a review of the cases and the legislative history of the Section, that "... the Union deliberately restricted the enforcement of its rule to an area involving the status of a member as a *member* rather

¹ 145 NLRB No. 109 (Member Jenkins concurring, Member Leedom dissenting).

than as an employee," and that it was thus complying with the requirements of the proviso.

Here, too, the Respondents have properly maintained the distinction between treatment of the individual as a member of the Union and treatment of him as an employee. They have imposed the fine only on their own members. It is not alleged that the Respondents ever attempted to affect the jobs or working conditions of any of the fined individuals. Nor is it alleged that the rule prohibiting members from crossing a picket line during a strike is not the legitimate concern of a union or properly the subject matter of internal discipline. It may be said then that the Respondents were engaged only in prescribing and enforcing their own rules with respect to the acquisition or retention of membership. Since, under the proviso, Section 8(b) (1) (A) does not impair the right of a labor organization to do this, it follows that the Respondents did not violate that Section.

[fol. 14] In reaching this conclusion, we do not deny that imposition of a fine by a union may, under certain circumstances, constitute the sort of restraint and coercion which is forbidden by Section 8(b) (1) (A). Thus, in our recent *Skura* and *Wellman-Lord* decisions,² we found violations where a union imposed fines on members because of their having filed charges with the Board before exhausting internal union remedies. However, as we were careful to point out in those cases, the rules involved there were beyond the competence of the union to enforce since they interfered with the right of union members to seek redress with the Board through the filing of charges. In Member Leedom's dissent, he argues that it is beyond the competence of a union to promulgate and enforce a rule prohibiting members from crossing a picket line. We cannot conceive of a subject which would be more within its competence, since it involves the loyalty of its members during a time of crisis for the union. The Act does not deprive a union of all recourse against those of

² Local 138, *International Union of Operating Engineers, AFL-CIO* (Charles S. Skura), 148 NLRB No. 74; Local No. 975, *International Union of Operating Engineers (Wellman-Lord Engineering, Inc.)*, 148 NLRB No. 81.

its own members who undermine a strike in which it is engaged. When the strike is lawful and the picket line is lawful, we cannot hold that a union must take no steps to preserve its own integrity. This is a far cry from the above-mentioned *Skurtz* and *Wellman-Lord* cases, where the union's conduct interfered with the members' utilization of Board processes and thereby hindered effective enforcement of the Act.

With respect to Member Leedom's further argument that the union rule here impinges on "employment" and is therefore not protected by the proviso to Section 8(b) (1) (A), we stated in *Wisconsin Motor*, and we recognize again here, that "In a sense, virtually all union rules affect a member's employment relationship." The question is whether, in enforcing the rule, the union goes outside the area of union-member relationship and enters the area of employer-employee relationship. We think it clear that the Respondents did not do so in this case.

[fol. 15] Furthermore, the Board long ago held in the *Minneapolis Star and Tribune* case³ that a union did not violate Section 8(b) (1) (A) by fining a member who did not perform picket duty during a strike. The facts herein are analogous. Accordingly, as no reason appears to us, and as our dissenting colleague has not indicated reasons why *Minneapolis Star* should be overruled, we reaffirm the conclusion in that case that the Respondents have not violated Section 8(b) (1) (A) of the Act.

³ *Minneapolis Star and Tribune Co.*, 109 NLRB 727.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed.

Dated, Washington, D. C. Oct 23 1964

.....
FRANK W. McCULLOCH, Chairman

.....
JOHN H. FANNING, Member

.....
GERALD A. BROWN, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

[fol. 16]

MEMBER JENKINS, CONCURRING:

Union competency to adopt internal rules is not in issue. The issue before us centers on whether union action, concededly coercive, has impinged on rights guaranteed employees under Section 7 of the Act. The resolution of this issue does not turn on whether the union rule impinges on "employment" as urged by the dissent. Neither, in my view, does it turn on whether the union enforcing action invades the employer—employee relationship, as urged by the majority. The central question appears to me to be whether the Act seeks to regulate the right of a union to discipline its members for refusing to respect a picket line lawfully erected by the union.

Certain it is that Section 7 assures to each employee the right to refrain from engaging in any concerted activities with which he is in disagreement. Neither Section 7 nor any other provision of the Act, however, grants assurance that the employee thus choosing to refrain shall be relieved of duties and obligations undertaken as a consequence of his acquisition or retention of membership in a labor organization.

As I pointed out in the concurring opinion in *Wisconsin Motor Corporation*,^{*} alternative choices must often be made by employees seeking to exercise rights conferred on them by Section 7. Just as the First Amendment to the United States Constitution protects the right to speak, but does not insulate the speaker against all consequences of having exercised the freedom of speech, in like fashion the Act, as I read it, protects the right of an employee to choose either to support a lawful picket line or to refuse to do so, but does not insulate the employee from all consequences flowing from his choice.

[fol. 17] Here, at the time the employee makes his choice, he is on notice (by virtue of the existence of a published union rule which he as a member of the union has obligated himself to observe) that his exercise of the statutory right to violate his union's picket line may sub-

^{*} 145 NLRB No. 109.

ject him to consequential discipline by the union. It must be remembered that the same statutory language relied upon to protect the right of the individual employee to refrain also protects the right of the group of employees to engage in the concerted activity here involved. Therefore without reference to the proviso to 8(b)(1)(A) it would follow that where a group of employees in furtherance of their Section 7 rights form a union and provide as one of the rules governing membership therein that all members must, on pain of specified disciplinary action, refrain from working behind a statutorily permitted picket line of the union, the specified disciplinary action may be taken by the union without offending Section 8(b)(1)(A) unless the disciplinary action itself violates some other section of the statute or is at odds with the public policies which the statute is designed to implement.

All that is added to the equation by the proviso language is the Congressional assurance that Section 8(b)(1)(A) is not intended to strip unions of the pre-existing right to formulate eligibility requirements for union membership and rules governing the conduct of union members.

In summary, I am persuaded that it would be a statutory anomaly to conclude from reading Section 7 and Section 8(b)(1)(A)—with or without the proviso—that all union action which restrains or coerces an employee violates 8(b)(1)(A) even though it is action not otherwise proscribed (and indeed may be authorized) by the Act, [fol. 18] and is a necessary adjunct or corollary to the preservation of solidarity inherent in the “mutual aid or protection” protected by Section 7.⁵

⁵ This apparently was the view of Senator Taft in the debates leading to adoption of 8(b)(1)(A). He observed that the acceptable (to him) alternatives were “either an open shop or an open union” and that 8(b)(1)(A) “decreed an open union.” He stated that the section permits a union to expel a member for whatever reason seems valid to it, and prohibits only an attempt by the union to have the employer discharge the employee or otherwise act against him. 93 Cong. Rec. 5088. If a union must (as the Act requires) admit to membership employees who tender dues and initiation fees, or forego the right under 8(a)(3) to limit employment to members, it would seem that the right to engage in “concerted”

For the reasons stated herein, I join the majority in dismissing the complaint herein.

Dated, Washington, D. C. Oct 23 1964

.....
HOWARD JENKINS, JR., Member

NATIONAL LABOR RELATIONS BOARD

activity would almost necessarily include the power to discipline the membership toward maintaining the "concert."

[fol. 19]

MEMBER LEEDOM, DISSENTING:

Unlike my colleagues and essentially for the reasons indicated in my dissent in *Wisconsin Motor*, *supra*, footnote 1, I would find that the Respondent Union violated Section 8(b)(1)(A) by imposing a fine on its members for violating its rule against crossing a Union picket line. In that case, it was my view that the imposition of fines for exceeding union-imposed production quotas fell within the ambit of Section 8(b)(1)(A) and, further, that the proviso to that section was inapplicable because the union rule, instead of relating to the acquisition and retention of membership, affected members in their employment relationship. The violation seems more patent here. Thus, the rule itself contravenes a right guaranteed by Section 7 of the Act, namely, the right to refrain from engaging in concerted activities, including strike activity. Further, the impact on the employment relationship is greater here since the imposition of the fine for disregarding the rule was calculated to preclude entirely, rather than partly, the gainful employment of members who were willing to work.

I find my colleagues' position herein difficult to understand in light of the views they expressed in the *Skura* case,⁶ which was decided after the *Wisconsin Motor* case. In *Skura*, they said that a rule requiring a member to exhaust his internal union remedies before filing charges with the Board is not "... within the competence of the union to adopt and enforce." They held, therefore, that imposition of a fine on a union member for violation of that rule constituted restraint and coercion in violation of Section 8(b)(1)(A) and that such conduct is not immunized from our processes by the proviso to that Section.

[fol. 20] If, as the Board has found, there was a violation in *Skura* then, surely it seems to me, there is a violation here. Just as in *Skura*, it is here beyond the competence of a union to promulgate and, by coercive means, to enforce a rule prohibiting members from crossing a

⁶ *Supra*, footnote 2. I concurred in that case, separately.

picket line, as the right to cross a picket line is encompassed by the guaranteed right to refrain from engaging in union or concerted activities. To hold otherwise is to permit a union to deprive employees of a right guaranteed to them by the Act—the very thing the Board frowned upon in *Skura*.

Yet, my colleagues of the majority revert again to the reasoning of the *Wisconsin Motor* case and find no violation because, in their view, the fined individuals are affected only in their status as members and not as employees. I think it will come as a surprise to the affected individual when he is told that a union fine designed to induce him to respect picket lines and stay away from his job does not touch him as an employee, but only as a union member. One of the indispensable factors in any employment relationship is the employee's willingness to come to work. It seems undeniable that such willingness is impeded by any penalty imposed because of it. Therefore, just as I could not agree that the production quotas or earnings ceilings which were involved in *Wisconsin Motor* did not concern "employment," I cannot agree here that the question of crossing a picket line does not concern "employment."

As we are all agreed that the imposition of fines constitutes a form of coercion, and as there should be no disagreement with the proposition, stated above, that the right to cross a picket line is protected by Section 7 of the Act, it follows that imposition of a fine for the purpose of coercing employees to refrain from crossing a picket line violates Section 8(b)(1)(A). The fact that the Union has adopted a rule on this matter cannot insulate unlawful conduct here, any more than it could in *Skura*. By their decision here, as well as their decision in *Wis-* [fol. 21] *consin Motor*, my colleagues seem to say that some protected activities are not protected from the coercion of a Union fine.⁷ I see no warrant for distinguishing

⁷ In its brief and in oral argument before the Board, the AFL-CIO, as *amicus curiae*, argues in substance that union disciplinary proceedings, including fines, are not regulated as such by the National Labor Relations Act but rather by the Landrum-Griffin Act and by state law. I concur in this position insofar as it implies

in this respect between various kinds of protected activities, and I must therefore dissent.*

Dated, Washington, D. C. Oct 23 1964

BOYD LEEDOM,

Member

NATIONAL LABOR RELATIONS BOARD

that there should be a single rule for union fines infringing upon protected activities, i.e., they are either all unfair labor practices or are all outside the ambit of the Act. In this connection, I think it significant that the majority, by distinguishing between the fines involved in *Skura* and *Wellman-Lord* on the one hand, and the fines in *Wisconsin Motor* and this case on the other, has rejected the clear implications of this argument by *amicus*. However, I disagree with *amicus* that the fact that union fines may be unlawful under other statutory enactments deprives the Board of authority to find that such fines are unfair labor practices. Thus, to take an obvious example, union violence on a picket line may give rise to state civil and criminal proceedings, and yet, it is well-established that such conduct is also an unfair labor practice under Section 8(b)(1)(A).

* *Minneapolis Star and Tribune Co.*, 109 NLRB 727, relied on by the majority, is in my opinion of doubtful precedential value. I did not participate therein, nor have I ever subscribed to the principle stated therein. In that case the Trial Examiner rather summarily rejected the General Counsel's contention that the imposition of a fine violated Section 8(b)(1)(A), and the Board was equally summary in affirming him, citing only *International Typographical Union et al. (American Newspaper Publishers Assoc.)*, 86 NLRB 951, 955-7. That cited case, however, despite some broad language, dealt only with the right of a union to threaten expulsion, and was decided on the ground that in view of the proviso such a threat could not be considered as "coercion." In my opinion the *Wisconsin Motor* case is the first case in which the Board has fully considered the applicability of the proviso to union fines. As I stated in *Wisconsin Motor* and reiterate here, I think it was wrongly decided.

[fol. 22] GENERAL COUNSEL'S EXHIBIT 2

June 11, 1963

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTEENTH REGION

Case No. 13-CB-1066

LOCAL 248, UAW, AFL-CIO

and

ALLIS-CHALMERS MANUFACTURING COMPANY

Case No. 13-CB-1222

LOCAL 248, UAW, AFL-CIO

and

ALLIS-CHALMERS MANUFACTURING COMPANY

(Old Case Number)

18-CB-177

(New Case Number)

13-CB-1408

LOCAL 401, UAW, AFL-CIO

and

ALLIS-CHALMERS MANUFACTURING COMPANY

STIPULATION OF FACTS

IT IS HEREBY STIPULATED AND AGREED by and between Respondents Local 248, UAW, AFL-CIO (hereafter called Local 248) and Local 401, UAW, AFL-CIO (hereafter called Local 401), Charging Party Allis-Chalmers Manufacturing Company (hereafter called the Company) and counsel for the General Counsel of the National Labor Relations Board that the following mat-

ters may be taken as fact in the above-captioned proceeding.

1. Local 248 and Local 401 are both labor organizations affiliated with and chartered by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, AFL-CIO (here-[fol. 23] after called the International Union). At all times material hereto Local 248 has been the collective bargaining representative, certified under the provisions of Section 9 of the Act, of production and maintenance employees working at the West Allis Works of the Company. At all times material hereto, Local 401 has been the collective bargaining representative, certified under the provisions of Section 9 of the Act, of production and maintenance employees working at the LaCrosse Works of the Company. Other than as described above, neither Local 248 nor Local 401 represents any other employees in collective bargaining.

Events at the West Allis Works

2. In June 1958 collective bargaining negotiations commenced between the Company, the International Union and various UAW local unions, including Local 248. The collective bargaining agreement then in effect between the Company and Local 248, attached hereto as Document # 1 and incorporated by reference, contained an expiration date of August 15, 1958. Article II of this agreement, and of the subsequent 1959 agreement attached hereto as Document # 1(A) and incorporated by reference, contains union security provisions. For the purposes of this proceeding only, it is admitted that, pursuant thereto, all non-probationary employees in the bargaining unit at the West Allis Works of the Company have been members of Local 248 at all times hereinafter mentioned.

3. On August 15, 1958, the collective bargaining agreement attached as Document # 1 was extended indefinitely by the parties thereto with a right of either to terminate the agreement upon seven (7) days' notice to the other. In January, 1959, Local 248 gave notice to the Company [fol. 24] terminating said agreement effective February

2, 1959, at 11:00 A.M. On February 2, 1959, Local 248 began an economic strike in support of its bargaining demands at the West Allis Works of the Company and on that date commenced picketing said premises with placards stating "ON STRIKE." Most of the West Allis Works bargaining unit employees who were then at work joined in the strike and left the premises. Others worked for one or more days thereafter. At all times from February 2, 1959, through out the strike, which ended April 20, 1959, the Company's shops and offices remained open during regular working hours and work was available for any employee who chose to refrain from participating in the strike, all in accordance with the Company's stated policy expressed in a letter issued by the Company to employees on February 2, 1959, attached hereto as Document # 2 and incorporated by reference.

4. During the course of the 1959 strike at the West Allis Works, approximately 175 bargaining unit employees worked on one or more days. In excess of 7200 of the 7400 employees working in the bargaining unit on February 2, 1959, joined the strike and did not work. The Company hired no replacements for the striking employees. On April 20, 1959, the Company and Local 248 executed a new collective bargaining agreement, a copy of which is attached hereto as Document # 1(A) and incorporated by reference.

5. The effective International Union Constitutions in the periods April 1957 to October 1959, and October 1959 to May 1962 are attached hereto as Documents # 3 and # 4 respectively and both are incorporated by reference. On or about February 24, 1959, Local 248 directed copies of the letter attached hereto as Document # 5 and incorporated by reference to members who had crossed picket [fol. 25] lines and worked during the strike. During the period February 2 through June 30, 1959, charges were filed with Local 248, of which attached Document # 6 is representative, against members who crossed the picket line and worked during the strike. On or about May 5, 1959, Local 248 directed copies of the letter attached hereto as Document # 7 and incorporated by reference to all members against whom such charges were brought.

On or about June 18, 1959, Local 248 directed copies of the letter attached hereto as Document # 8 and incorporated by reference to all members against whom such charges were brought.

6. Local 248 Trial Committee hearings upon such charges commenced on July 7, 1959. In accordance with Article 30 of the International Union Constitution, Trial Committee reports, attached hereto as Documents # 9 and # 10 and incorporated by reference, were prepared and adopted without change by majority vote of those present at a membership meeting on September 12, 1959. The trial proceedings resulted in each charged member being found guilty of "conduct unbecoming a Union member," and each such member was fined therefor in an amount up to \$100. A list of the names of the members fined and the amounts of said fines is attached hereto as Document # 11 and incorporated by reference.

7. On or about September 18, 1959, Local 248 directed copies of the letter attached as Document # 12 and incorporated by reference to all members named on Document # 11. On or about October 6, 1960, Local 248 directed copies of the letter attached as Document # 13 to all of the same members.

8. On or about April 21, 1961, Local 248 directed copies of the letter attached as Document # 14 to all of the members named on Document # 11. On or about August 29, 1961, Local 248 commenced suit in Milwaukee [fol. 26] County Court, Civil Division, against Benjamin Natzke, for collection of the fine specified on Document # 11. A copy of the Summons, Complaint, and response to the Motion to Make Complaint More Definite and Certain in that case are attached hereto as Document # 15 (A), (B) and (C), respectively, and incorporated by reference. The *Natzke* case came on for hearing in October, 1962. The transcript of testimony therein is attached as Document # 16 and shall be considered for all purposes as if such testimony had been given in the instant proceeding. Those exhibits in the *Natzke* record that are elsewhere made a part of this Stipulation of Facts are not attached to Document # 16. On April 26, 1963, the trial court found for the plaintiff Local 248, rendering an

opinion attached hereto as Document # 17 and incorporated by reference. A notice of appeal to the Circuit Court, Milwaukee County, has been filed by defendant Natzke in said matter.

9. On November 1, 1961, the Company and Local 248 extended indefinitely their collective bargaining agreement (Document # 1(A)) with the right of either party to terminate upon seven (7) days' notice to the other. On February 19, 1962, Local 248 gave notice to the Company terminating the agreement effective midnight, February 26, 1962. On February 26, 1962, Local 248 began an economic strike in support of its bargaining demands at the West Allis Works of the Company and at midnight commenced picketing said premises with placards stating "ON STRIKE." Most of the West Allis Works employees in the bargaining unit who were then at work joined in the strike and left the premises. Others worked during one or more days thereafter. At all times from February 26, 1962, throughout the strike, which ended March 4, 1962, the West Allis Works shops and offices remained [fol. 27] open and work was available for any employee who chose to refrain from participating in the strike, all in accordance with the Company's policy stated in a letter issued to employees on February 26, 1962, attached hereto as Document # 18 and incorporated by reference.

10. During the course of the strike, approximately 30 bargaining unit employees worked on one or more days. In excess of 5450 of the approximately 5500 employees working in the bargaining unit on February 26, 1962, joined the strike and did not work. The Company hired no replacements for the striking employees. On March 4, 1962, the Company and Local 248 executed a new collective bargaining agreement, a copy of which is attached hereto and incorporated by reference as Document # 19.

11. On or about April 11, 1962, Local 248 directed copies of the letter attached as Document # 20 and incorporated by reference to members who were believed to have crossed picket lines and worked during the strike. At various times during the period February through May, 1962, members of Local 248 filed charges, of which Document # 21 attached hereto and incorporated by ref-

erence is representative, against members who were believed to have crossed picket lines to work during the strike. Commencing on or about April 11, 1962 and continuing to approximately May 4, 1962, Local 248 directed copies of a letter, attached hereto as Document # 22 and incorporated by reference, to members against whom such charges had been brought.

[fol. 28] 12. On July 9, 1962, Local 248 Trial Committee hearings were held upon such charges. Of the 30 members tried, 29 who crossed picket lines and worked during the 1962 strike were found guilty by the Trial Committee. In accordance with Article 30 of the International Union Constitution, a Trial Committee report, attached hereto as Document # 23 and incorporated by reference, was prepared and adopted without change by majority vote of those present at a membership meeting of Local 248 on August 5, 1962. On or about August 7, 1962, Local 248 directed copies of the letter attached hereto as Document # 24 and incorporated by reference to all of the aforesaid 29 members.

13. On or about May 8, 1963, Local 248 directed copies of the letter, attached hereto as Document # 25 and incorporated by reference, to all members who had not paid the aforesaid fines.

14. At all times material to this case, the members fined in 1959 and 1962 have been employed by the Company within the bargaining unit represented by Local 248 and covered by the agreements attached as Documents # 1, # 1(A) and # 19. None of these members have paid the above-mentioned fines imposed upon them by Local 248, except as indicated on attached Documents # 26 and 26(A) incorporated by reference herein. None of the fined members have been dropped from membership in Local 248 as a result of non-payment of the fines. None of the fined members have been dropped from membership in Local 248 and none of said members have taken action to resign or otherwise terminate their membership in Local 248, except in connection with the termination of employment or other normal causes. Local 248 has made no demand upon the Company to discharge or otherwise affect the employment status of the employees fined in 1959 and/or 1962.

[fol. 29] *Events at the LaCrosse Works.*

15. The collective bargaining agreement in effect prior to August 15, 1958, between the Company and Local 401 is attached hereto as Document # 27 and incorporated by reference. Pursuant to agreement of the parties thereto, said agreement was extended until February 2, 1959. Article II of this agreement, and of the subsequent 1959 agreement attached hereto as Document # 27(A) and incorporated by reference, contains union security provisions. For the purposes of this proceeding only, it is admitted that, pursuant thereto, all non-probationary employees in the bargaining unit covered by said agreements have been members of Local 401 at all times hereinafter mentioned.

16. On February 2, 1959, Local 401 began an economic strike in support of its bargaining demands at the La-Crosse Works of the Company and commenced picketing the premises with placards stating "ON STRIKE." Two employees represented by and members of Local 401 chose to cross the picket lines and remain at work for the Company during the course of the strike, which terminated on April 19, 1959, when the Company and Local 401 executed Document # 27(A).

17. Upon charges filed against the aforementioned two employees and Trial Committee proceedings pursuant to Article 30 of the International Union Constitution, a Trial Committee report, attached hereto as Document # 28 and incorporated by reference, was prepared and adopted without change by majority vote of those present at a membership meeting of Local 401 on July 11, 1959. As a result of said proceedings, a fine of \$100 was imposed by Local 401 upon each of the two charged members.

18. On or about May 15, 1962, Local 401 commenced [fol. 30] suit against both of the above-mentioned members for collection of said fines. Said actions have been maintained at all times subsequent thereto, except that suit against one member was dropped by Local 401 on June 13, 1962.

19. Upon expiration of the 1959 agreement (Document # 27(A)) as extended by the parties thereto, Local 401

began an economic strike in support of its bargaining demands at the LaCrosse Works of the Company at midnight on February 26, 1962 and commenced picketing the premises with placards stating "ON STRIKE." During the course of the strike, which lasted until March 5, 1962, four employees represented by and members of Local 401 chose to cross the picket line and work for the Company on one or more days of the strike. All others of the approximately 625 employees working in the bargaining unit on February 26, 1962, joined in the strike and did not work. The Company hired no replacements for the striking employees. On March 5, 1962, the parties executed a new collective bargaining agreement, a copy of which is attached hereto as Document # 29 and incorporated by reference.

20. During the month of March, 1962, charges attached as Documents # 30 (A), (B) and (C) and incorporated by reference were filed with Local 401 against the four members described above. On or about March 27 and June 4, 1962, Local 401 directed copies of the letters attached as Documents # 31 and # 32, respectively, and incorporated by reference, each of the said four members. On June 4, 1962, Trial Committee hearings were held by Local 401 upon said charges, and subsequently a Trial Committee report was prepared which is attached hereto as Document # 33 and incorporated by reference. On June 7, 1962, this report was adopted without change [fol. 31] by majority vote of those present at a Local 401 membership meeting. On June 11, 1962, Local 401 directed to each of said members a copy of the letter attached hereto as Document # 34 and incorporated by reference.

21. None of the fined members have been dropped from membership in Local 401 and none of said members have taken action to resign or otherwise terminate their membership in Local 401. Local 401 has made no demands upon the Company to discharge or otherwise affect the employment status of the employees fined in 1959 and/or 1962.

22. At all times material to this case, the members fined in 1959 and 1962 have been employed by the Com-

pany within the bargaining unit represented by Local 401 and covered by the agreements attached as Documents # 27, # 27(A), and # 29. None of these members have paid the above-mentioned fines imposed upon them by Local 401.

This Stipulation of Facts is made without prejudice to any objection that any party may have as to the materiality or competency of any facts stated therein. Such objection when made in the briefs of any party shall be taken as if made by said party at an appropriate time to the testimony of witnesses offered in proof of said fact.

DATED at Milwaukee, Wisconsin, this 11th day of June, 1963.

LOCAL 248, UAW, AFL-CIO and LOCAL 401, UAW,
AFL-CIO

By /s/ Max Raskin
Name

Atty
Title

ALLIS-CHALMERS MANUFACTURING COMPANY

By /s/ John G. Kamps
Name

Attorney
Title

GENERAL COUNSEL OF THE NATIONAL LABOR
RELATIONS BOARD

By /s/ Gerry M. Miller & George F. Graf.

Name

Counsel for the General Counsel
Title

[fol. 32]

ATTACHMENT # 1

1955-58

AGREEMENT

ALLIS-CHALMERS MANUFACTURING COMPANY
WEST ALLIS WORKS

with

LOCAL 248

of the

United Automobile Aircraft and Agricultural
Implement Workers of America, CIO

[Union Label]

* * * *

[fol. 33]

Article II

Mutual Securities

Section A. Union Shop

Subject to applicable state laws:

1. Every employe who, on the effective date of this agreement, is a member of the Union shall, as a condition of employment, maintain his membership in the Union to the extent of paying his monthly dues;

2. Every person who is an employe on the effective date of this agreement shall, as a condition of continued employment, become a member of the Union by November 1, 1955 and shall remain a member of the Union for the duration of this agreement to the extent of paying his monthly dues and initiation fees, if any;

3.* Every person who becomes an employe after the effective date of this agreement shall, as a condition of con-
[fol.34] tinued employment, become a member of the Union within ninety (90) days following employment and shall remain a member of the Union for the duration of this agreement to the extent of paying his monthly dues and initiation fees, if any.

* * * *

[fol. 35]

ATTACHMENT # 4

CONSTITUTION
of the
INTERNATIONAL UNION

*United Automobile, Aircraft and
Agricultural Implement Workers of America,*
UAW

[SEAL]

Adopted at Atlantic City, N. J.
October, 1959

[Union Label]

Printed in U.S.A.

[fol. 36]

* * * * *

ARTICLE 2

Objects

* * * * *

Section 3. To improve the sanitary and working conditions of employment within the factory, and in the accomplishment of these necessary reforms we pledge ourselves to utilize the conference room and joint agreements; or if these fail to establish justice for the workers under the jurisdiction of this International Union to advocate and support strike action.

* * * * *

[fol. 37]

ARTICLE 6

Membership

* * * * *

Section 2. Any person eligible to become a member of the International Union who is not affiliated with any organization whose principles and philosophy are contrary to those of this International Union as outlined in the Preamble of this Constitution, may apply for membership to the Local Union having jurisdiction over the plant in which he is employed. The applicant must, at the time of application, be an actual worker in and around the plant.

All applicants for membership in any Local Union of the International Union shall fill out an official application provided by the International Union, answering all questions contained in such application, and sign a promise to abide by all laws, rules and regulations and the Constitution of the International Union. All applications thus received shall be referred to the Local Union for consideration, and shall be acted upon as soon as possible, but [fol. 38] not later than sixty (60) days from the date the application is received by the Financial Secretary of the Local Union.

* * *

[fol. 39]

ARTICLE 30

Trials of Members

Section 1. A charge by a member or members in good standing that a member or members have violated this Constitution or engaged in conduct unbecoming a member of the Union must be specifically set forth in writing and signed by the member or members making the charges. *The charges must state the exact nature of the alleged offense or offenses and, if possible, the period of time during which the offense or offenses allegedly took place.* Two (2) or more members may be jointly charged with having participated in the same act or acts charged as an offense or with having acted jointly in commission of such an offense and may be jointly tried.

* * *

[fol. 40]

Section 4. A member against whom charges have been filed shall be notified of such charges by receipted registered mail within seven (7) days after the charges have been submitted to the Local Union or, in the case of an Amalgamated Local Union, to the Shop Organization of which he is a member.

* * *

Section 7. The accused member shall be tried by a Trial Committee selected by drawing names from the members attending the first Local Union or Amalgamated Local

Union unit meeting which is held at least five (5) days after the notification to the member charged. * * *

[fol. 41] Section 10. The Trial Committee, upon completion of the hearing on the evidence and arguments, shall go into closed session to determine the verdict and penalty. A two-thirds ($\frac{2}{3}$) vote shall be required to find the accused guilty. In case the accused is found guilty, the Trial Committee may, by a majority vote, reprimand the accused; or it may, by a two-thirds ($\frac{2}{3}$) vote, assess a fine not to exceed one hundred dollars (\$100) with automatic suspension, removal from office or expulsion in the event of the failure of the accused to pay the fine within a specified time; or it may, by a two-thirds ($\frac{2}{3}$) vote, suspend or remove the accused from office or suspend or expel him from membership in the International Union.

Section 11. The Trial Committee shall thereupon report its verdict and judgment to the body from which it was selected at the membership meeting of that body next following the determination of the verdict and judgment of the Trial Committee, and in case of a verdict of guilty, such verdict and judgment shall become effective only upon approval by a majority vote taken by secret ballot at the membership meeting. In case of a verdict of guilty, the membership meeting may, by a majority vote taken by secret ballot, modify the verdict or order a new trial. The vote shall first be upon the verdict of guilty. If such verdict is not approved by such majority vote, the accused shall stand acquitted. If the verdict of guilty is approved by such majority vote, the vote shall then be upon the penalty recommended by the Trial Committee. This vote shall be conducted by first voting by secret ballot upon the penalty recommended by the Trial Committee. If a majority vote supports the recommended penalty, it shall be considered approved. If a majority vote rejects the recommended penalty, the membership shall then decide upon an appropriate penalty by majority vote in a manner to be determined by the membership.

* * *

[fol. 42]

ARTICLE 43

Initiation Ceremony

The President shall say to the Guide:

"You will now place the candidate before me for the obligation." The Guide advances with the candidate and places him in front of the President's station. All newly elected members before being admitted to full membership shall subscribe to the following obligation:

"I pledge my honor to faithfully observe the Constitution and laws of this Union and the Constitution of the United States (or Canada, as the case may be); to comply with all the rules and regulations for the government thereof; not to divulge or make known any private proceedings of this Union; to faithfully perform all the duties assigned to me to the best of my ability and skill; to so conduct myself at all times as not to bring reproach upon my Union, and at all times to bear true and faithful allegiance to the International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW).

* * *

[fol. 43]

ARTICLE 50

Strikes

Section 1. Whenever any difficulty arises within the jurisdiction of any Local Union within the shop involved, between its members and any employer or employers, growing out of reduction in wages, lengthening of hours of labor, or other grievances incident to the conditions of employment, or whenever any Local Union desires to secure for its members an increase in wages, a shorter work day or other changes in the conditions of employment, the Local Union involved shall call a meeting of all members to decide whether the proposed changes shall be accepted or rejected. The majority vote of those present and voting on the question shall decide. If, as a result of this decision, a strike vote is decided upon, the Local Union Executive Board shall notify all members, and it shall require a two-thirds ($\frac{2}{3}$) vote by secret ballot of those

voting to declare a strike. Only members in good standing shall be entitled to vote on the question of declaring a [fol. 44] strike. Where a different ratification procedure for a Local Union or an Intra-Corporation Council has been properly applied for under terms of Article 19, Section 3, and after the International Executive Board has approved such ratification procedure, the method for accepting or rejecting contract changes and the taking of strike votes shall be governed by the terms of the procedure approved by the International Executive Board for that Local Union or Intra-Corporation Council.

Section 2. If the Local Union involved is unable to reach an agreement with the employer without strike action, the Recording Secretary of the Local Union shall prepare a full statement of the matters in controversy and forward the same to the Regional Director and International President. The Regional Director or his assigned representative in conjunction with the Local Union Committee shall attempt to effect a settlement. Upon failure to effect a settlement he shall send the International President his recommendation of approval or disapproval of a strike. Upon receipt of the statement of matters in controversy from the Regional Director, the International President shall prepare and forward a copy thereof to each member of the International Executive Board together with a request for their vote upon the question of approving a strike of those involved to enforce their decision in relation thereto. Upon receipt of the vote of the members of the International Executive Board, the International President shall forthwith notify in writing the Regional Director and the Local Union of the decision of the International Executive Board.

Section 3. In case of an emergency where delay would seriously jeopardize the welfare of those involved, the International President, after consultation with the other International Officers, may approve a strike pending the submission to, and securing the approval of, the International Executive Board, providing such authorization shall be in writing.

Section 4. Neither the International Union nor any [fol. 45] Local Union, nor any subordinate body of the International Union, nor any officer, member, representa-

tive or agent of the International Union, Local Union or subordinate body shall have the power or authority to instigate, call, lead or engage in any strike or work stoppage, or to induce or encourage employees of any employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any good, articles, materials, or commodities, or to perform any services, except as authorized by the International Executive Board or the International President in conformity with the provisions of this Constitution. Such power and authority resides exclusively in the International Executive Board and the International President, and may be exercised only by collective action of the International Executive Board as provided in Section 2 of this Article or by emergency action of the International President as provided in Section 3 of this Article.

● Section 5. Before a strike shall be called off, a special meeting of the Local Union shall be called for that purpose, and it shall require a majority vote by secret ballot of all members present to decide the question either way. Wherever the International Executive Board decides that it is unwise to longer continue an existing strike, it will order all members of Local Unions who have ceased work in connection therewith to resume work and thereupon and thereafter all assistance from the International Union shall cease.

Section 6. Any Local Union engaging in a strike which is called in violation of this Constitution and without authorization of the International President and/or the International Executive Board shall have no claim for financial or organizational assistance from the International Union or any affiliated Local Union.

Section 7. The International President, with the approval of the International Executive Board, shall be empowered to revoke the charter of any Local Union engaging in such unauthorized strike action, thereby annulling [fol. 46] all privileges, powers and rights of such Local Union under this Constitution.

Section 8. In cases of great emergency, when the existence of the International Union is involved, together

with the economic and social standing of our membership, the International President and the International Executive Board shall have authority to declare a general strike within the industry by a two-thirds ($\frac{2}{3}$) vote of the International Executive Board whenever in their good judgment it shall be deemed proper for the purpose of preserving and perpetuating the rights and living standards of the general membership of our International Union, provided, under no circumstances shall it call such a strike until approved by a referendum vote of the membership.

Section 9. In case of a general strike, it shall require a majority vote of the International Executive Board before the strike is officially called off.

* * * *

[fol. 47]

, ATTACHMENT # 5

LOCAL 248—UAW

8111 West Greenfield Avenue
West Allis 14, Wisconsin

February 24, 1959

Dear Member:

It has come to our attention that on diverse days since February 2, 1959 you have disregarded the strike action of Local 248—UAW, walked through its picket lines and continued in employment at the Allis-Chalmers Plant, all in violation of the Constitution and By-Laws of the International and Local Union and the best interests of its members.

We desire to direct your attention to the fact that such action on your part constitutes conduct unbecoming a member of the union and upon a finding of guilty, subjects you to a fine up to \$100.00 for each offense. Each day of violation may well constitute a separate offense.

The seriousness of your conduct becomes apparent when you realize that you are attempting to undermine the aims and objectives of 7378 employees and their families.

We hope that you will reverse your action and abide by the oath you took as a member of the Union.

Fraternally yours,

EXECUTIVE BOARD
Local 248, UAW-AFL-CIOglt
oeiu-9-afl,cio

[fol. 48]

ATTACHMENT #6

Formal charges submitted to the Union Office

FILE COPY

Do Not Remove From File

TO: Local 248 UAW

The undersigned, a member in good standing of Local 248 UAW hereby charges that (ACCUSED MEMBER'S NAME) has engaged in conduct unbecoming a member of the union by:

entering upon and participating in production at the
Allis Chalmers West Allis strike-bound plant on the
— day of —, 1959.

thereby seeking to defeat the economic goals and unity of purpose of the membership of Local 248 UAW and the International Union, all in violation of the Constitution of the International Union.

WITNESS'S NAME

Date: Date signed by Witness

[fol. 49]

ATTACHMENT # 7

EDWARD MERTEN
President

FLOYD LUCIA,
Financial Secretary

CLIFFORD BROCKER,
Vice-President

MATTHEW KELLY,
Recording Secretary

LOCAL 248
UAW-AFL-CIO

8111 W. Greenfield Avenue West Allis 14, Wisconsin
Phone: Greenfield 6-7130 6-7131

[Union Label]

May 5, 1959

This is to inform you that you have been charged with "conduct unbecoming a Union member", inasmuch as you violated Local 248's picket lines during our last strike against the Allis-Chalmers Company. The specific charges are on file at the Local Union Office.

A Trial Committee will be selected at the June Membership Meeting per Section 7, Article 30 of the International Constitution.

You have also been placed under suspension by the membership (Section 6, Article 30 of the International Constitution) pending the outcome of your trial.

The Trial Committee will be selected by lottery (Section 7, Article 30 of the International Constitution) and you are entitled to be present, if you so desire.

Fraternally yours,

/s/ Matt Kelly
MATT KELLY,
Recording Secretary
LOCAL 248, UAW AFL CIO

MK:mlk
oeiu-9-afl-cio.

[fol. 50]

ATTACHMENT # 8

LOCAL 248—UAW

8111 West Greenfield Avenue
West Allis 14, Wisconsin

June 18, 1959
Milwaukee, Wisconsin

Pursuant to the Constitution of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, you are hereby notified that the trial upon the charges filed against you (a copy of which has previously been mailed to you) will commence on July 7th, 1959 at 7:30 P.M. at the Local Union Headquarters, 8111 West Greenfield Avenue, West Allis 14, Wisconsin.

Please present yourself with your witnesses. You may appear with Counsel, if you so desire.

TRIAL COMMITTEE

By: /s/ Lucille Quinnies
Secretary, Trial Committee

mlk
oeiu-9-afl-cio

[fol. 51]

ATTACHMENT # 9

EXHIBIT B

Report of Trial Committee No. 1

ITS FINDINGS, DECISION AND JUDGMENT

Charges of conduct unbecoming a union member were filed by various members of Local 248 UAW in good standing, against 155 other members of the local union. A Trial Committee denominated hereafter as Trial Committee No. 1, was chosen on June 13, 1959, in accordance with the Constitution of the International Union UAW, to hear, try and determine the guilt or innocence of the parties charged.

Each of the parties were notified of the charges and of the date of trial. All of the proceedings were had pursuant to the rules adopted by the Trial Committee.

The charges, in substance, stated that the members had engaged in conduct unbecoming a union member by entering upon and participating in production at the Allis-Chalmers Manufacturing Company West Allis strike-bound plant on one or more days during the progress of the strike, thereby seeking to defeat the economic goals and further, to weaken the unity of purpose of the members of Local 248 UAW and the International Union, all in violation of the Constitution of the International Union.

Each of the accused persons were represented by the same legal counsel, who had agreed to consolidate all of the cases, so that the testimony and evidence taken was to affect and control the verdict and judgment of each of the persons so charged.

[fol. 52] Counsel for the accused entered a plea of not guilty to these charges.

Hearings were held and testimony taken on various days beginning July 8, 1959, the last day of such hearings being on August 19, 1959. On that day, this Trial Committee and the Trial Committee later chosen, hearing similar charges, jointly heard further testimony. The

joint hearings were held with the consent and approval of counsel for the accused.

Counsel further agreed to an extension of time for the submission of this report. Arguments were made and briefs were filed by counsel for the accused in their defense.

Each member of Local 248 UAW is also a member of the International Union UAW. The Constitution of the International Union to which each member of Local 248 UAW subscribed, states that among the objectives of the union is to improve the economic and working conditions of the employees the union represents, and if necessary, to advocate and support strike action in order to gain such objectives. Therefore, it became the duty, obligation and purpose of each member of the union to support and participate in a strike called by the membership of Local 248 UAW.

The strike at the Allis-Chalmers Manufacturing Company West Allis plant, began on February 2, 1959. It was called by the membership of Local 248 UAW and authorized by the International Union, in conformity with the provisions of the Constitution of the International Union. The strike did not terminate until agreement was reached between the Allis-Chalmers Company and Local 248 UAW and the International Union, on April 20, 1959.

[fol. 53] Immediately following the calling of the strike, picket lines were stationed about the various gates of the plant, and full participation in and support of this strike were expected of each member of Local 248 UAW. The calling and the continuation of the strike was an integral part of the collective bargaining responsibility of Local 248 UAW and the International Union.

Each of the accused admits that he or she entered the plant and walked through the picket lines on the days, as charged, during the progress of the strike.

It is the opinion of this Trial Committee that by so doing, the accused persons attempted to reverse the action of the membership of Local 248 UAW and the International Union, who believed that in order to gain the objectives sought, it was necessary and essential to engage in the strike action.

The accused, further, by crossing the picket lines and entering into production, engaged in individual bargaining, thereby rejecting the Local and the International Union as the exclusive collective bargaining representatives.

Among the duties of a member of Local 258 UAW and the International Union is to consciously seek to understand and exemplify by practice, the intent and purpose of the obligations of a member and to acquit himself as a loyal and devoted member of the Local and the International Union.

No greater act of disloyalty to the members on strike, to the local union and the International Union, and to the [fol. 54] cause to which they have dedicated themselves can be committed by a member than to cross the picket lines which were established and authorized by his own union. The crossing of the picket lines did, in essence, give aid and comfort to the company at the very time when it was necessary to muster all of the moral and economic powers of the Local and International Union to gain the objectives of the strike.

By letter from the Executive Board of the Local 248 UAW, the accused persons were warned prior to any charges being filed against them, that their continuation in crossing the picket lines for the purpose of engaging in production at the plant might well subject them to a trial for conduct unbecoming a union member, and a possible fine. Except in a few instances, the accused disregarded such warning.

During the course of the trials, it came to the attention of the Trial Committee, that the Allis-Chalmers Manufacturing Company had engaged at its expense, legal counsel to represent the accused persons. Whether the accused knew of such retention prior to the trials is not clear.

Parties charged with conduct unbecoming a union member may be represented by counsel of their choice. But it ill becomes a company against whom a strike was called, to stretch its arms into the internal affairs of the Local Union, and thus interfere with its constitutional processes.

The Trial Committee, however, in arriving at its decision, did not consider this latter developments a factor in determining the guilt or innocence of the accused persons.

The Trial Committee gave long and serious consideration [fol. 55] to the matter of the guilt or innocence of the accused, and the subject of the fines and penalties to be imposed. Except in the case of eight of the accused, the Trial Committee did not have the benefit of the personal appearance of the individuals.

Each of the accused had the full opportunity to appear in person if desired.

It may be true that some of the accused had financial difficulties or personal problems which prompted them to cross the picket lines. But these were no different than the difficulties or problems of other members who consistently and at a sacrifice, supported the decision to remain on strike until it was settled through means of negotiations and bargaining between authorized committees and the approval of Local 248 UAW, and the International Union.

Under the International Union Constitution, a person found guilty of charges may be subject to the payment of a fine not to exceed the sum of \$100.00. It is true that most of the accused had continued to violate their duty and obligation of membership on more than one day. It is also true that each day of such violation could well be considered a separate offense accompanied by a separate penalty.

While the penalties assessed may be viewed by some as inadequate in the light of the grave offenses committed by the accused, the Trial Committee believes that the interest of the union will be best served by the adoption of its recommendations.

After hearing all of the evidence, viewing the various records and exhibits and listening to the arguments of [fol. 56] counsel for the accused, we, the Trial Committee, find as follows:

(1) That the steps taken by Local 248 UAW, the International Union and the officers and representatives, in the calling, authorizing and conducting the strike, beginning on February 2, 1959, were all in accordance and

compliance with the provisions of the International Union Constitution and the powers vested therein.

(2) Each of the accused passed through the picket lines during the progress of the strike on the days as charged.

(3) Each of the accused engaged in individual bargaining by accepting the terms of the Allis-Chalmers Manufacturing Company at a time when the same were rejected by the duly authorized collective bargaining representatives of the members of Local 248 UAW and the International Union.

(4) Each of the accused violated their duty and obligation of membership, and deserted the cause of their Local and International Union.

(5) Each of the accused consciously failed to acquit himself or herself as a loyal and devoted member of Local 248 UAW and the International Union.

(6) Each of the accused, although it was their duty to support the strike, by their conduct gave aid and comfort to the company at a time when the membership was on strike against the company.

It is our judgment, therefore, that each of the accused parties charged with conduct unbecoming a union member is guilty of such charge, and that as a penalty therefore, each must pay a fine in the amount set forth opposite his or her name, as follows.

[fol. 57]

ATTACHMENT # 12

LOCAL 248—UAW

8111 West Greenfield Avenue
West Allis 14, Wisconsin

September 18, 1959

You have had a fair trial by the Trial Committee, as selected by the members of Local 248, under the provisions of the International Constitution.

The guilt and fine assessed against you for conduct unbecoming a union member has been brought to the membership for their consideration. The membership has upheld the Trial Committees in their decisions and fines.

You are, therefore, indebted to Local 248 in the sum of \$100.00 and payment thereof is demanded in order to again be in good standing in Local 248.

You may pay your fine by check or money order made payable to Local 248, UAW, or you may come to settle this matter in person.

Respectfully,

/s/ Frank Starich
FRANK STARICH,
Recording Secretary
LOCAL 248, UAW-AFL-CIO

FS:glt
oeiu-9-afl,cio

[fol. 58]

ATTACHMENT # 13

WILLIAM JOHNSON
President

MATTHEW KELLY
Vice-President

FLOYD LUCIA
Financial Secretary

FRANK STARICH
Recording Secretary

LOCAL 248
UAW-AFL-CIO

8111 W. Greenfield Avenue West Allis 14, Wisconsin
Phone: Greenfield 6-7130 6-7131

[Union Label]

October 6, 1960

You were formally notified back in September, 1959 by Local 248 of your obligation concerning the payment of \$100.00, which represents the fine assessed against you for conduct unbecoming a Union member during the course of the 1959 strike.

Since that letter of September 18, 1959, however, we have NOT sent you any further notification of your obligation to pay your fine, as we were awaiting the decision of the State Supreme Court on these matters.

On Tuesday, October 4, 1960, the Supreme Court of Wisconsin ruled that "a labor union has the right to levy a fine against union members who have been found guilty of conduct unbecoming a union member by reason of crossing a picket line".

Since you had a fair trial, and the membership of Local 248 upheld the decisions of the Trial Committee, and a fine was levied against you, which has NOT been paid, we ask at this time that you pay, in full, your obligation to Local 248. We hope that no further proceedings will be necessary to enforce collections.

You may pay your fine by check, or in person, and deposit with the Financial Secretary of Local 248 at your earliest convenience. May we hear from you soon?

Sincerely yours,

/s/ Floyd Lucia
FLOYD LUCIA,
Financial Secretary
LOCAL 248, UAW-AFL-CIO

FL:mlk
oeiu-9-afl-cio

[fol. 59]

ATTACHMENT # 14

WILLIAM JOHNSON
President

MATTHEW KELLY
Vice-President

FLOYD LUCIA
Financial Secretary

FRANK STARICH
Recording Secretary

LOCAL 248
UAW-AFL-CIO

8111 W. Greenfield Avenue West Allis 14, Wisconsin
Phone: GGreenfield 6-7130 6-7131

[Union Label]

April 21, 1961

The United States Supreme Court has refused to change the decision of the Wisconsin Supreme Court, upholding the right of Local 248 to fine a member who entered the strike-bound plant of the Allis Chalmers Manufacturing Company during the strike.

We have previously informed you that you have been found guilty as a result of a trial before the Local Union Trial Committee and fined in the sum of \$100.00. This sum is due Local 248, UAW-AFL-CIO and we hope you will no longer delay its payment.

We, therefore, urge you to pay this amount by **NO LATER THAN MAY 1, 1961**. Your failure to do so will compel us to turn the matter over to our attorneys, Raskin, Zubrensky and Padden, for civil suit.

Very truly yours,

/s/ **Floyd Lucia**
FLOYD LUCIA,
Financial Secretary
LOCAL 248, UAW-AFL-CIO

FL:glt
oeiu-9-afl,cio
(cert.)

[fol. 60]

ATTACHMENT # 16

STATE OF WISCONSIN
COUNTY OF MILWAUKEE
IN COUNTY COURT, BRANCH # 7

LOCAL UNION # 248, U.A.W., PLAINTIFF

—vs—

BENJAMIN NATZKE, DEFENDANT

October 16, 1962 at 9:30 A.M. Trial to the Court,
the Hon. Edwin C. Dahlberg, Presiding.

APPEARANCES: Mr. Max Raskin, Atty. for the
Plaintiff.

Defendant in person and by Mr. Herbert Mount,
Atty.

THE FOLLOWING PROCEEDINGS WERE HAD AND
TESTIMONY TAKEN.

* * * *

[fol. 61] MR. RASKIN: I will stipulate that he became a member of the plaintiff union because it was required as a condition of employment. I will stipulate to that.

MR. MOUNT: That should come from the defendant.

MR. RASKIN: It's admitted he was a member of limited association, if you want to explain his membership I have no objection. You admit he was a member of the union, if you want to explain how he became a member, I have no objection to that.

MR. MOUNT: Where he is or is not I am not prepared to state at this time.

MR. RASKIN: The answer says he was a member but says he was a limited member.

MR. MOUNT: I will stipulate to the language in the answer.

COURT: I think it's a matter that requires proof.

MR. MOUNT: I have here the agreement, contract between Allis-Chalmers and Local # 248, the 1958 agree-

ment being I understand contains the union shop provision, is the same as 1955.

MR. RASKIN: the '55 is like this (Plaintiff's Exhibit # 1 marked 1955-58 Agreement)

MR. RASKIN: Would it be necessary to introduce testimony as to its being accepted.

MR. MOUNT: That's not in dispute.

COURT: If that is all we can stipulate to Mr. Raskin will you call your first witness?

[fol. 62]

FLOYD LUCIA SWORN TO TESTIFY ON DIRECT EXAMINATION BY MR. RASKIN:

Q. Will you state your name?

A. Floyd Lucia.

Q. Where do you live?

A. 3244 No. 87th St. Milwaukee,

Q. Are you employed by the plaintiff union # 248 UAW?

A. I Am.

Q. Do you hold any office?

A. I am financial secretary of the Milwaukee union on a full time basis.

Q. Is that local union for members or employees of Allis-Chalmers of West Allis?

A. Yes.

Q. You are the financial secretary?

A. Yes.

Q. And as such do you keep a record of employees who become members of the union?

A. I have all such records, yes.

Q. In the case of Benjamin Natzke, can you tell us what your records shows with respect to his membership in the union?

A. Our record indicates that shortly after the signing of the 55-58 agreement where it became necessary for some nine hundred people who were not in the union there, he attended a membership meeting on November 1, 1955 and became initiated along with several hundred others.

OBJECTION BY MR. MOUNTS: Not the best evidence.

MR. RASKIN: Do you have the records you are referring to with you?

A. I do.

[fol. 63] MR. MOUNT: I object—

COURT: I'll sustain the objection.

MR. RASKIN: We must establish these customs, we know what was done this is customary in the union.

MR. MOUNT: Those minutes don't prove he was there. This witness doesn't know whether the defendant was there by the testimony.

MR. RASKIN: I'll withdraw this witness and I will get Mr. Kelly here. I will introduce this document thru Mr. Kelly who was then secretary.

CROSS-EXAMINATION BY MR. MOUNT:

Q. Mr. Lucia, do you know of your own knowledge whether or not Mr. Natzke ever signed what is called an application for membership?

A. They are called authorization for check-off of dues, that's the application and he did sign one.

Q. Is there another form of card, a green card, known as application for membership which was used at about that period of time?

A. No. Long before that the authorization for check off of dues became effective with the 1950-55 agreement. Prior to 1950 they didn't have what is called an all union shop.

Q. Do you have with you or can you obtain the last form or the application or right to authorize that check-off?

MR. RASKIN: That's incorporated in the contract.

MR. MOUNT: I am concerned about the language.

MR. RASKIN: I have no objection to the card being offered into evidence.

QU. The card marked Defendant's Exhibit "2", entitled authorization for check-off of dues to Allis-Chalmers Manufactuirng Company Is that the card which

you have been referred to as the check-off authority card?
[fol. 64] A. Yes.

[fol. 65]

**MR. MATT KELLY SWORN TO TESTIFY ON
DIRECT EXAMINATION BY MR. RASKIN:**

[fol. 66] A. There were some people who for some personal reason could not make the membership meeting, they were told to come to the union office, and either myself or someone would be present.

Q. I show you what has been marked Plaintiff's Exhibit # 4, could you identify this exhibit—what is it?

A. This is notification to the member to attend the membership meeting to be initiated.

Q. For what meeting—for what date?

A. This one date for November 1st meeting, 1955.

MR. RASKIN: I would offer Exhibit # 4 into evidence as the notice sent to members.

MR. MOUNT: No objection.

COURT: Then without objection Exhibit # 4 will be admitted into evidence, having heretofore been marked Exhibit # 4.

Q. Was it your duty to send these letters out?

A. It was.

Q. With respect to the people whose names appear on the list which is attached to the minutes of November 1st, can you tell whether or not these letters were sent to these people?

A. They were definitely.

Q. That includes Benjamin Natzke?

A. Yes.

MR. RASKIN: On this Exhibit # 4 at the bottom of it in handwriting signed by some individual who had returned this letter making an excuse for not being able to be present at this meeting, this is not part of the exhibit.

Q. When we speak of initiation, what was the initiation that was conducted?

A. What form was used?

[fol. 67] Q. Yes? You understand me?

A. We would ask the new members to rise and come to the front and address them, tell them what their obligations were as union members, and then read the oath, explain some of the international customs.

Q. Can you refer to the oath that was invoked? (1957 Constitution attached to pleadings used by witness)

A. Yes, this is it, item # 43, page # 105 of the '57 constitution. This is exactly what was read and the newly initiated members were asked to raise their right hands and repeat their name, and I would read this entire obligation and it would be repeated by the newly initiated members.

Q. Was that done on November 1st with respect to the names attached to the minutes, including the name of Benjamin Natzke?

A. Yes.

MR. RASKIN: That's all.

CROSS-EXAMINATION BY MR. MOUNT:

Q. How long have you been a member of the union?

A. Twenty years.

Q. Is it your testimony that all of the persons whose names appear on the list attached to the minutes of November 1, 1955 were present in person on that evening?

A. Yes.

Q. Every one?

A. Yes.

Q. Some are marked the second shift, does that include those also?

A. Yes, I did separate the minutes in the afternoon and the minutes in the evening meeting.

Q. Was a roll call had of the persons who appeared as new members?

[fol. 68] A. No sir.

Q. The only statement in these minutes which you said you took as to the initiation which was as follows: at this point after the space which says some brief remarks by Koenig.

A. Yes.

Q. After these remarks this is the entry: At this point the new members that were present (256) were initiated into local # 248 UAW-CIO?

A. That is on the second page of the minutes, yes.

Q. The president spoke briefly to the new members about to be initiated and stressed the fact that full participation of every member was necessary to build a strong union, and then refers to the initiation, "at this point the new members that were present (256) were initiated into local 248, UAW-CIO, (see attached list)". That is the extent of the record of what transpired as to the initiation that night, is that right?

A. That's correct.

Q. When was it that the check-off authority cards were signed by these people, before this meeting—when they applied for membership?

A. I couldn't say for certain—that's how we collect our dues.

Q. When do they sign the check-off authority?

A. Well we never sent notices out to anyone but the ones for initiation.

Q. Defendant's Exhibit "E" is Authorization for Check-off, was this card used in 1955?

A. Yes that's the one we used.

Q. And this is where you got the names of new members [fol. 69] who had applied for membership and were to present themselves for initiation?

A. Yes.

Q. At this time in 1955 there was no other application card for membership?

A. There was the check-off and then those who did not want to sign the check-off were window-paying members.

Q. There was no other formal application for membership in the union? At this time in 1955 was a person desiring to join the union required to sign any other form of card of application than Exhibit "E"?

A. If they wanted to become members and didn't want to sign the check-off card they could pay the dues at the window. They didn't have to sign one of these to become a member of the local.

Q. If they were willing to sign the check-off authority, then Exhibit "E" would be the only card which was signed?

A. Yes.

Q. At the meeting of November 1, 1955, which is now almost seven years ago—?

A. Yes, that's correct.

Q. Do you recall whether at that time the new members who were present were ordered to the front of the room?

A. Yes.

Q. They were ordered to raise their right hand and repeat the oath which was pointed out in the international constitution?

A. Yes.

Q. Was this list attached to the minutes prepared before or after the meeting?

A. It was after the meeting.

[fol. 70] Q. This was prepared from the checkoff cards?

A. No sir.

MR. RASKIN: The list was not prepared from these, he's already testified to this.

COURT: The question has been asked and answered.

MR. MOUNT: That's all.

RE-DIRECT EXAMINATION BY MR. RASKIN:

Q. The list that is attached to the minutes, where did those names come from:

A. As I stated before, this was the membership list that we received at the membership meeting which was signed by the individuals by each new member present at the meeting and initiated.

Q. Where was the list that was used for the purpose of notifying people to come to the initiation meeting for initiation?

A. The application card was the check-off card, the people who didn't sign were window-paying members.

Q. Is that what happened in 1955, November?

A. Yes, I sent letters to each and every member.

MR. RASKIN: That's all.

MR. MOUNT: No re-cross examination.

MR. RASKIN: We rest at this time.

[fol. 71]

**BENJAMIN NATZKE SWORN TO TESTIFY ON
DIRECT EXAMINATION BY MR. MOUNT:**

Q. Mr. Natzke, how long have you been working for Allis-Chalmers?

A. In 1947, April.

Q. When did you join the plaintiff union, local # 248?

A. I believe around 1955, when that contract was negotiated for closed shop.

Q. You are referring to the contract between Allis-Chalmers and Local #.248?

A. Yes.

Q. And was there any other reason why you joined the union at that time?

OBJECTION BY MR. RASKIN: Immaterial.

COURT: I'll sustain the objection.

Q. At the time in 1955 that you did join was that because of the contract which had just been recently signed?

A. Very definitely.

Q. What did you have to do in order to join the union?

A. I was asked at that time to sign a membership card, which I did.

Q. By membership card do you mean this Exhibit "E" which is check-off authority?

A. I signed a check-off authority but it seems to me I signed a second card, I am not sure.

Q. Did you receive a notice to come to the union meeting?

A. I did.

Q. And can you recall whether that was about November 1, 1955?

A. I presume it was thereabouts.

Q. State whether or not you did attend that meeting?

A. Not to my recollection.

[fol. 72] Q. State whether or not you ever attended a meeting at which you were called upon to rise and come to the front of the room?

A. Not to my recollection.

Q. Did you ever attend a meeting at which you were asked to raise your right hand and repeat the oath of allegiance to the union?

A. Not to my recollection.

Q. State whether you were called into the office of the union and in the presence of one or more officers asked to raise your right hand and repeat the oath of allegiance to the union?

A. No sir.

Q. Do you recall attending any union meeting at which you signed a list on which other names were signed?

A. No sir.

Q. To your knowledge, if you recall from 1955 to 1959 was there more than one kind of membership in the union?

A. I believe so because I considered myself more or less of a dues paying member, not active, and asked favors of nobody.

Q. To what extent did you participate in any union activity?

OBJECTION BY MR. RASKIN: Immaterial and irrelevant.

COURT: I'll overrule the objection, the witness may answer.

QUESTION REREAD BY THE REPORTER

A. None whatever.

Q. As to being a member, was there anything required of you in connection with paying dues?

A. No I had signed a check-off card.

Q. The Company paid the dues?

A. The Company paid the dues.

Q. Mr. Natzke, do you recall attending a hearing called [fol. 73] by the local union at the union headquarters?

A. Yes.

[fol. 74] COURT: Except for your objection that the exhibit is immaterial and the whole line of questioning is immaterial, have you any objection to the exhibit being received?

MR. RASKIN: Not to the authenticity

COURT: On that limited basis it will be received.

Q. Mr. Natzke, the balloting which took place on August 13, 1958 was at the Milwaukee Auditorium?

A. Yes.

Q. And was there any form of report or statement made by the union officials before the balloting while you were there?

A. There was a statement made by one of the officers that the voting was a vote of confidence for the bargaining committee, and that before a strike would be taken that it would be again referred to the bargaining committee, that the members would again be advised.

Q. After the August balloting were pamphlets from time to time handed out at the plant gate to the employees, the workers?

A. Yes they were.

Q. Do you recall one dated November 11, 1958 which has been marked Defendant's Exhibit "G", can you identify that?

A. Yes I seen that before.

Q. Did you see it about that time—what is that date—November, 1958?

A. About that time.

Q. And I ask whether the matter of further decision in the strike situation was again brought to the membership?

MR. RASKIN: The instrument speaks for itself.

COURT: You have no objection except the general objection that this line of questioning is immaterial?

MR. RASKIN: Yes.

[fol. 75] COURT: For that limited purpose it will be received.

MR. MOUNT: I call the court's attention to the last two paragraphs, Blank Check Strike Authority. This exhibit bears the stamp of the Court Commissioner Evan C. Schwemer, that may be disregarded.

Q. State whether or not you cast your ballot on that occasion after listening to statements made by union leaders?

A. That's right, after statements were made.

Q. Do you recall a further meeting on February 2, 1959 of the general membership?

A. Yes.

MR. RASKIN: I object to this line of questioning.

COURT: You object to this entire line of testimony on the grounds it is immaterial Mr. Raskin?

MR. RASKIN: That's right.

COURT: We will take the testimony subject to your objection.

Q. Where was that meeting held?

A. At the Auditorium.

Q. What time of day?

A. Right after 11:00, shortly after that.

Q. Were you on the first shift at that time?

A. Yes.

Q. You worked in the morning?

A. Yes.

Q. Did you leave the plant that morning?

A. Yes.

Q. Were you notified of the meeting?

A. I believe I was.

Q. Do you recall the purpose of the meeting?

A. I don't recall what was said but I do know it was for the purpose of a strike.

[fol. 76] Q. After you left the plant, state whether or not there were any pickets on duty at that time?

A. Yes there were.

Q. What time did you get down to the Auditorium?

A. Somewhere between 11:15 and 11:30.

Q. Was there a large crowd there?

A. Yes.

Q. Was there any discussion by local union leaders or international union leaders?

A. There were some comments made.

Q. Was the question of the strike discussed?

A. There was just comments from the bargaining committee or the officers, and somebody from the floor asked whether the members could be heard and he was told they had been heard, you have had an opportunity.

Q. Was there any discussion in opposition to the calling of the strike at the time in question?

A. There was no discussion I know of.

Q. Was there any proposition made by the company presented to the membership at that time as to contract conditions?

A. No sir.

Q. Did you go back into work on that date?

A. No sir.

Q. When was it on what date did you go back to work?

A. About two weeks later.

Q. After that you received this warning that you were violating the union constitution, something to that effect, is that right?

A. Yes.

Q. Did you, nevertheless, continue to work?

[fol. 77] A. Yes.

* * *

[fol. 78]

JEAN EGGBRECHT SWORN TO TESTIFY ON
DIRECT EXAMINATION BY MR. MOUNT:

* * *

[fol. 79] Q. Is this the notice of the meeting you referred to being held July 12th?

A. Yes it is.

Q. Did you receive such a notice as Exhibit "H"?

A. Yes.

MR. MOUNT: I call the Court's attention to the # 2 marked on here by Court Commissioner Schwemer.

Q. On July 12th do you know whether or not discussions were being held between Allis-Chalmers and the bargaining committee of local # 248?

A. If there were discussions we were not so informed.

OBJECTION BY MR. RASKIN: Not responsive.

COURT: I'll overrule the objection—the answer may stand.

Q. Do you know whether or not the '55 contract was up for renewal at that time?

A. Whether or not the contract was up for renewal?

Q. Was there discussion of the contract at the July meeting, the July 12th meeting?

A. No.

Q. Was there discussion of a strike vote?

A. Not to my knowledge, not at the July meeting.

Q. Was a strike vote to your knowledge authorized to be taken at any time?

A. At the July meeting.

Q. Do you know or recall when the secret ballot was taken on the question of strike?

A. At the August ballot.

Q. At the South Side Armory meeting in July, do you recall what statements, if any, were made by the executive [fol. 80] officers or executive board members with regard to taking a strike vote?

A. At the time we were told that they would like a vote of confidence to show the company the strength.

Q. Did you attend this balloting on August 13th?

A. I attended, I didn't vote.

Q. Were you for or against the strike action?

A. I was against it, and I didn't vote because I wouldn't give a blank check to anybody, they should have had negotiations, that was my opinion at the time.

Q. You stated you did attend at the Auditorium?

A. I did.

Q. Were any statements made by officers of the union or the international union on the question of the strike?

A. The greatest portion of the discussion was by an international officer, Greathouse.

Q. Do you recall what was said on the subject of the strike?

A. We were told that if it would be deemed necessary to call a strike it would be taken back to the membership first before any action would be taken.

Q. At that time were you informed of the bargaining—of the negotiations between the local and the company?

A. Through leaflets and word of mouth is about all we could get.

Q. You mean—

A. Flyer distribution.

Q. Phamplets?

A. That's right.

Q. And between August 13th and February 2nd were [fol. 81] any general meetings of the membership called by the union to discuss the negotiations?

A. Not that I was notified of.

Q. Do you recall a meeting called at the Milwaukee Auditorium on February 2, 1959?

A. I definitely do.

Q. And did you attend that meeting?

A. I did.

Q. What time was it called for?

A. It was called for eleven, I arrived shortly after eleven.

Q. What time did you leave the plant?

A. I left the plant about ten to eleven.

Q. Were you working the first shift?

A. I was.

Q. At the time you left the plant can you state whether or not any pickets were posted outside the gates?

A. Pickets were at the gate.

Q. Were you advised what the purpose of the meeting at the auditorium was?

A. The purpose of the meeting, information on bargaining.

Q. Were any reports made to the members present at that time in the auditorium?

A. Briefly there was a discussion at which time they told us there was no bargaining, I do not recall the words verbatim but to the effect that we were going to stay out on this strike.

Q. You were told you were going out on strike?
[fol. 82] A. Yes.

Q. Was there any secret ballot, was a ballot taken at the meeting of February 2nd?

A. A secret ballot?

Q. Was any ballot taken?

A. No ballot, no written form, a vote, yes.

Q. What kind of vote?

A. Standing vote, rising vote.

Q. What was the question—on what question?

A. The question was at that time whether we should support the executive committee.

Q. Was this relative to the strike?

A. Yes.

Q. Was any proposal by the company reported to the meeting?

A. No sir.

Q. Was there any discussion from the floor on the motion to support the Executive Committee?

A. No sir.

Q. Did you attempt to speak?

A. I didn't—others did.

Q. Did you see anyone else attempt to speak?

A. Yes the gentlemen sitting right next to me attempted to.

Q. Was there a microphone there?

A. There was, I was sitting behind it.

Q. Did he get the floor?

A. He took the microphone, made one statement and they immediately cut the power of the microphone off.

* * *

[fol. 83]

CROSS-EXAMINATION BY MR. RASKIN:

Q. You were removed as an officer of the union were you not?

A. Yes, from two offices.

Q. The reason for your removal was because you didn't attend union meetings, isn't that right?

A. No. One particular meeting.

Q. You don't know what the issues were between the company and the union with respect to negotiations did you?

A. I didn't say I didn't know the issues.

Q. You did know them?

A. I said I was not informed by local # 248.

Q. What?

A. I said I was not informed by local # 248.

A. Who were you informed by?

A. I read the paper, information from meeting people, other members and employees.

Q. Were you provided with the minutes?

A. Very seldom.

Q. Were you provided with the officers minutes with respect to the issue between the company and the union?

A. Occasionally.

Q. You didn't vote at the August 13th meeting did you?

A. Most certainly not. I wouldn't give anybody a blank check without knowing what it was.

Q. You didn't vote?

A. No sir.

Q. You had an opportunity to vote?

A. I had an opportunity.

Q. You didn't take that opportunity?

A. No sir.

[fol. 84] Q. You were at the meeting of July 12th?

A. I was.

Q. Did you vote at that meeting?

A. No sir.

Q. You had an opportunity to vote?

A. Yes sir.

Q. That meeting was simply to authorize the holding of the meeting of August 13th, isn't that correct?

A. Partially. You'll find all that in the by-laws.

Q. Just answer the questions.

A. I am answering the questions.

Q. You don't believe in strikes do you?

A. I didn't say that.

Q. I asked whether you do or you don't?

A. Not entirely. I believe in thorough and complete negotiations first.

Q. Did you know that Local # 248 had another strike very recently?

A. Yes.

Q. You went back to work or scabbed, continued to work?

OBJECTION BY MR. MOUNT: Immaterial. This witness is not on trial.

MR. RASKIN: No but she's next.

COURT: I'll sustain the objection.

Q. When you appeared before the trial committee you had an attorney did you not?

A. I did.

Q. Who took care of the fees for your attorney?

A. I don't know.

[fol. 85] Q. You never paid for him?

A. I have received no bill, I don't even know if he has been paid.

Q. You never paid him?

A. No.

Q. You knew Mr. Mount before he represented you?

A. Yes.

Q. Did he tell you he was doing it gratis?

A. No.

Q. Are you being paid today by the company for being here?

A. No sir, I am receiving a witness fee only.

MR. RASKIN: That's all. I now move that all the testimony with respect to the calling of the strike, the strike vote, etc. all of the testimony that was given on direct or cross-examination by the defense witnesses be stricken.

COURT: The Court will take the motion under advisement, I will rule on that matter later. Mr. Mount do you have any further testimony?

MR. MOUNT: Not at this time.

* * * * *

[fol. 86] COURT: Mr. Raskin do you have rebuttal testimony?

A. Yes.

Will you proceed

HARRY KITZMAN SWORN TO TESTIFY ON DIRECT EXAMINATION BY MR. RASKIN:

Q. Will you state your name?

A. Harry Kitzman.

Q. Where do you live?

A. 2932 No. Hackett, Milwaukee.

Q. Do you hold any position with the International Union of which local # 248 is affiliated?

A. I do.

Q. What position do you hold?

A. International executive board member and regional director of region # 10 in which local # 248 lies.

Q. Region # 10 is comprised of various locals, is that correct?

A. Correct.

Q. Of which the U.A.W. is one?

A. Correct.

Q. Local Union # 248 is part of region # 10 and part of the International Union?

A. Correct.

Q. Were you familiar with the fact that a vote was taken on August 13, 1958 by local # 248 giving authority to the executive board to call a strike when and if necessary?

A. I was.

Q. Were you familiar with respect to the procedure?

A. I was.

[fol. 87] Q. Following the taking of that vote, will you state whether or not the international union gave approval to the strike?

A. Following the taking of the vote the local union filled out the regular application form which is customary when a vote has been taken, the results of the vote, how many "Yes" and how many "no", and requests strike authority, that has to go through me. I forward it to the International with the recommendation that strike authority be granted.

Q. The strike vote even before the actual strike was in progress is given approval by the international union?

A. Correct.

Q. Will you state what are the usual and customary practices—

A. Why strike authority is granted you mean?

Q. Yes—what are the practices?

A. This is the general practice that has been followed. After a strike vote is taken the local union makes application for strike authority, I forward it on to the International union with a recommendation strike authority be granted, if I don't feel it is warranted I will then recommend strike authority be held up pending further negotiations or investigations. This is done all the time, strike authority is granted sometimes months in advance, in some instances strikes never take place, in fact out of some 35 or 40 strike authority that were granted in the last year, only one went into effect.

OBJECTION BY MR. MOUNT: Immaterial and irrelevant.

MR. RASKIN: I think we have the right to show usual procedures.

COURT: I will take the testimony subject to your objection Mr. Mount.

[fol. 88] **Q.** I'll show you this Exhibit F, this has been introduced as part of the record, this is the ballot which was used on October 13th by local # 248, can you tell whether or not the language in this ballot is or is not the language regularly and customarily used by local unions of the U.A.W. when voting for authority to strike?

A. That's the language.

OBJECTION BY MR. MOUNT: Immaterial and irrelevant.

A. This is the customary language that is used whenever a strike vote is taken.

COURT: I'll permit the answer to stand.

Q. Is there any other secret ballot necessary following this?

A. No.

OBJECTION BY MR. MOUNT: Immaterial.

COURT: I'll sustain the objection.

MR. RASKIN: If the court will not permit this testimony I will make an offer of proof.

Q. Mr. Kitzman what is the usual and normal practice with unions in the region of U.A.W. under the constitution with respect to the necessity of taking another secret ballot vote after one has been taken in the language as we have it here?

A. There is none.

MR. MOUNT: This is the offer of proof?

COURT: Yes.

MR. MOUNT: I will object to this testimony.

COURT: I will sustain your objection.

MR. MOUNT: No questions.

[fol. 89]

**MR. FLOYD LUCIA RECALLED—REBUTTAL BY
MR. RASKIN:**

COURT: Mr. Lucia, you are still under oath, you understand that?

A. Yes sir.

Q. I show you what has been marked Exhibit # 9, will you tell us what this is?

A. This is a certificate of election form which is kept in the record of the union, it was turned over by—

Q. What election?

A. Strike vote.

Q. Continue—when?

A. On Wednesday, August 13, 1958.

MR. RASKIN: I offer Exhibit # 9 into evidence, certification of Election.

MR. MOUNT: I have some questions.

COURT: Very well Mr. Mount, do you want to cross-examine on this?

MR. MOUNT: Yes.

EXAMINATION BY MR. MOUNT:

Q. Exhibit # 9 does not have the date upon which this exhibit was prepared does it?

A. It was prepared August 13, 1958.

Q. Did you prepare it?

A. No it was prepared by the election committee.

Q. Is that the ballot on which there was a recount later with different results or is this the original?

A. There was no recount whatever on that, none whatever.

Q. Were there any questions on this occasion regarding the retabulation figure later on?

A. No.

[fol. 90] Q. That didn't occur on this date?

A. No.

MR. MOUNT: I have no objection other than the general objection to the whole line of testimony.

COURT: As the court understands it, this will be received subject to your general objection to the whole line of testimony.

FURTHER EXAMINATION BY MR. RASKIN:

Q. Were you present at the meeting of August 13th?

A. Yes.

Q. What kind of discussions, if any, were had at that meeting?

A. At the August 13th meeting?

Q. Yes.

A. We talked about what had taken place with the company and the union up until that particular date, up until August 13th the company had not made any concrete proposal whatever. Just two days later after the August 13th strike vote the company very quickly responded with an offer and of course was considered as a start and that was up to August 15th. There were negotiations taking place between the company and the union up to that date and a report to the membership.

Q. Was this report made?

A. Yes.

Q. Were you present at the meeting of February 2, 1959?

A. Yes.

Q. State whether or not any report was made with respect to the bargaining committee negotiations from August 13th?

A. Yes by the bargaining committee, by the present of the union and other officers.

[fol. 91] Q. From August 13, 1958 to February 2, 1959 state whether or not members of the union and employees of the company were appraised of the negotiations with respect to the bargaining or negotiations?

A. Yes.

Q. Were there regular union meetings during this period?

A. Yes.

Q. Were reports given at these meetings?

A. Yes in entirety.

Q. Members of the union were free to come and attend the meetings and listen to the reports?

A. Yes.

CROSS-EXAMINATION BY MR. MOUNT:

Q. Under the constitution as you know it the final right to call a strike belongs to the membership does it not?

OBJECTION BY MR. RASKIN:

COURT: I'll sustain the objection.

Q. February 2nd was the actual date of the strike?
Is that correct?

A. Yes.

MR. MOUNT: That's all.

MR. RASKIN: Nothing further.

* * *

[fol. 92]

MR. MATT KELLY RECALLED TO TESTIFY ON
EXAMINATION BY MR. RASKIN:

COURT: You are still under oath Mr. Kelly do you understand that?

A. Yes sir.

Q. I show you Exhibit # 10 can you identify that?

A. Yes.

Q. What is that?

A. This card was sent out to the entire membership notifying them the vote was going to be held on August 13, 1958.

Q. This card was sent out to the entire membership?

A. Yes.

Q. Including the defendant in this case?

A. The entire membership was notified.

MR. RASKIN: I offer Exhibit # 10 into evidence.

MR. MOUNT: No objections.

COURT: Do you have any further questions Mr. Raskin?

A. No.

Mr. Mount?

A. No.

MR. RASKIN: I would like to recall Mr. Lucia again.

MR. MOUNT: May be it won't be necessary, perhaps we can stipulate on this card.

MR. RASKIN: Can we stipulate that except for the color the membership card which Mr. Mount is holding in his hand is a true copy of the one that the defendant had during the years between 1955 and 1959?

MR. MOUNT: I will stipulate except for the color, the blue one is marked 1961.

* * *

[fol. 93] DEFENDANT'S EXHIBIT G

NEGOTIATIONS BULLETIN NO. 14

'PIE IN THE SKY' DEMANDS!!

These are some of the Union's proposals which have been labeled "pie in the sky" by the Company.

1. FOUR (4) WEEKS VACATION

Many industries have improved their vacation plans to include four (4) weeks vacation. The recent settlement at John Deere provides for four (4) weeks vacation after 25 years of service. We don't think we are asking for "pie in the sky".

2. MASTER CONTRACT

In arguing against a Master Contract, the Company uses the argument that each of their plants build a different product, therefore, a Master Contract is unworkable.

At the West Allis Works, we build everything from tractors to huge steam turbines, yet we have only ONE "master" contract covering all of our members. Sounds like more "A-C Double Talk".

3. SKILLED TRADES PROGRAM

Your Union wants recognition for our skilled tradesmen. The maintenance and protection of our skilled classifications is needed to protect our apprentice program. This is the only way to insure the apprentice that his four (4) years of training are not wasted.

TEST YOUR SENIORITY I. Q.

Did you test yourself on the Company's quiz regarding application of seniority? Chances are you registered a big, fat ZERO!!

The Company brags about how concerned they are about your seniority. Why did they lay off Foundry people, OUT OF LINE OF SENIORITY, under the guise of an "emergency"? An "emergency" which developed after months of stock-piling by the Company!!

RIGHT TO STRIKE

The Company wants a "No Strike" clause. They claim they must have this to protect their customers. Still, they

insist that certain portions of the contract be non-arbitrable. In other words, the Company wants to be "judge and jury". Your Union has proposed that we be given the right to strike on any issue, which cannot be heard before an Impartial Referee. We have to protect OUR MEMBERS!! They are just as important to us as the customers are to the Company.

"GET OUT THE VOTE"

The Company, for some unknown (?) reason, seems a little provoked at Labor's efforts to encourage every registered voter to "Get Out and Vote". We wonder why. Could it be some of their "boys" were defeated in the last election??

IN-PLANT ELECTIONS

The Company maintains that the only way to have a real democratic Union election is to conduct it on Company premises. We have no argument with conducting our elections in the plant—BUT—we want to conduct them under the terms of our Local Union By-Laws and International Constitution. The Company wants them conducted under their terms.

BLANK CHECK STRIKE AUTHORITY

This is a good example of the "Big Lie". The membership of Local 248 did NOT give ANYONE a blank check! The minutes of the August 13th Strike Vote will bear this out. President Morten told the membership, at this meeting, that before strike action was taken the members would be called together to make the decision.

Further—The International Executive Board CANNOT CALL A STRIKE!! They can authorize only. THE LOCAL UNION MEMBERSHIP will be given the opportunity to make the final decision.

NOTE: There have been no negotiating sessions since Friday, October 31, 1956.

LOCAL 248, UAW-AFL-CIO

11-20-56

[fol. 94]

ATTACHMENT # 25

LOCAL 248—UAW

8111 West Greenfield Avenue
West Allis 14, Wisconsin

May 8, 1963

Judge Edwin C. Dahlberg has decided in the case of Local 248 vs. Benjamin Natzke that the Union is entitled to recover the \$100.00 fine imposed by the Local when Natzke crossed the picket line during the Allis-Chalmers strike.

This case was agreed as being the pilot case to decide the issue whether the union has a right to collect the fine.

We request, therefore, that you make arrangements with the Financial Secretary of Local 248 for payment of the fine of \$100.00 previously imposed upon you.

Your failure to do so will only involve additional expense to you.

We expect you to come into the office of the Union to make these arrangements immediately.

Very truly yours,

/s/ Frank Starich

FRANK STARICH,

Rec. Sec'y.

LOCAL 248, UAW-AFL-CIO

FS:mlk
oeiu9

[fol. 95]

ATTACHMENT # 30(c)

COPY OF CHARGES.

I am officially preferring charges against Vernon Johnston for conduct unbecoming a union member when he crossed our picket line during our recent strike.

/s/ ADRIAN DRECKTRAH

3/26/62

. to Vernon Johnston

[fol. 96]

ATTACHMENT # 31

LOCAL UNION 401

United Automobile—Aircraft—Agricultural Implement
Workers of America (UAW)
La Crosse, Wisconsin

[Union Label]

March 27, 1962

Dear Sir:

This is to advise you that you have been charged with a violation of the International Constitution and for conduct unbecoming a Union member by reason of the fact that you have crossed the picket line and gone to work during an officially authorized strike.

A copy of the charges is attached.

A copy of the International Constitution is also enclosed so as to enable you to determine your rights under the Section "Trials of Members" starting on page 72.

Yours truly,

/s/ [Illegible]

Rec. Sec.

Local 401 UAW

Enc.
Att.

[fol. 97]

LOCAL UNION 401

United Automobile—Aircraft—Agricultural Implement
Workers of America (UAW)
La Crosse, Wisconsin

[Union Label]

COPY OF CHARGES.

I am officially preferring charges against Vernon Johnston for conduct unbecoming a union member when he crossed our picket line during our recent strike.

/s/ ADRIAN DRECKTRAH

3/26/62

LOCAL UNION 481

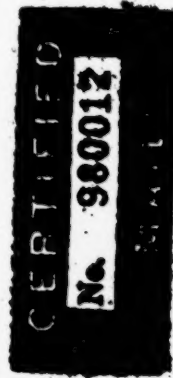
United Automobile - Aircraft - Agricultural Workers
of America (UAW)
1726 Wipacabego Street
LA CROSSE, WIS.



RETURN RECEIPT REQUESTED

Vernon Johnson
2142 Cliffview Terrace
La Crosse, Wis.

IMPORTANT



[fol. 99]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1964 APRIL SESSION, 1965

No. 14853

ALLIS-CHALMERS MANUFACTURING COMPANY, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

On Petition for Review of an Order of the
National Labor Relations Board.

OPINION—September 13, 1965

Before KNOCH, CASTLE and KILEY, *Circuit Judges*.

KILEY, *Circuit Judge*. Allis-Chalmers has petitioned this court to review and set aside the National Labor Relations Board's dismissal of a complaint against two locals of the intervening union, International Union, UAW-AFL-CIO (Locals 248 and 401), bargaining agents for certain Allis-Chalmers employees, charging that the union committed unfair labor practices in fining members for crossing picket lines during a strike called by the union. We deny the petition. *

The facts are stipulated. The two locals in question are bargaining agents at the employer's West Allis and La-Crosse, Wisconsin plants. The collective bargaining agreements at both plants contain union security clauses which require that employees join the union within thirty days after hiring and "remain members of the Union to the extent of paying dues." Both locals struck the Allis-Chalmers plants, on economic issues, from February 2 to

[fol. 100] approximately April 20, 1959, and again between February 26 and approximately March 5, 1962. During each strike some employee-members of the union crossed the picket lines and worked.

Each strike was called in accordance with the procedures prescribed by the constitution of the International union: a majority agreement to hold a formal strike vote, notification to all members of the vote, approval of the strike by at least a two-thirds majority in secret balloting, followed by approval of the International Executive Board. After each strike formal written charges of violations of the International constitution and by-laws were served on the offending members, followed by formal adversary hearings before union Trial Boards resulting in fines ranging from \$20.00 to \$100.00.¹

Some of the members have paid the fines in whole or in part, but others have refused to pay. The union has attempted to collect the fines but has made no effort to have members who refuse to pay them discharged, nor to affect their employment status in any way. No members have been expelled or suspended from the union, nor have any resigned, for any reason arising from the disciplinary proceedings. In a test suit brought against one member who refused to pay a fine, one of the locals recovered a judgment in the County Court of Milwaukee County, Wisconsin, which was affirmed on appeal to the Circuit Court of Milwaukee County, and, this court is informed, is now under advisement by the Wisconsin Supreme Court.

The issue before us is whether a union which imposes fines upon its members for crossing a picket line of the union and seeks to secure payment of the fines by suing or by threat of suit is guilty of violating the prohibition, in Section 8(b)(1)(A) of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C. § 141, *et seq.*, against union action restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act. Underlying the issue is the broader problem of the impact

¹ One hundred dollars is the maximum fine permissible under the union constitution. Since each crossing of the picket lines was treated as a separate offense, the fines in some cases could have been considerably greater than those actually imposed.

of Section 8(b) (1) (A) of the 1947 Taft-Hartley amendments upon union discipline of members.

[fol. 101] For the purpose of confining the issue we point out that the parties do not dispute that generally employees have the right not to strike; that the union may expel its members for any reason authorized by its rules; and that the union may not demand, nor may an employer accede to the demand, that an employee-member be discharged, prevented from promotion, or have his employment status otherwise adversely affected, except for non-payment of uniform initiation fees and dues.

The Act in Section 7² guarantees to an employee the right to engage in concerted activities "for the purpose of collective bargaining or other mutual aid or protection" and to refrain from such activities. Section 8(b) (1) (A) of the Act, 61 Stat. 141, 29 U.S.C. § 158(b) (1) (A), provides that

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein

Allis-Chalmers contends that a union member who crosses a picket line of his own union is exercising his Section 7 right to refrain from engaging in a concerted activity and that if the union disciplines the member for engaging in this activity by any means other than expulsion from the union, it violates Section 8(b) (1) (A). This

² 61 Stat. 140, 29 U.S.C. § 157.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership as a condition of employment as authorized in section 8(a) (3).

contention rests upon a literal reading of Section 7. But a literal reading fails to take into account the history and purpose of the Section, which shows that it was not intended to immunize a union member from discipline for defiance of a decision of the majority to strike.

[fol. 102] There is no merit in the contention, because Congress did not intend in Section 7 to protect everything which might be described as "concerted activities." As an example, the House Committee Report on H.R. 3020, the House version of the bill, pointed out that the courts and the Board had already held that wildcat and sitdown strikes were not protected activities and that the bill would make no change in those rules,³ and the Conference Report on the House and Senate bills states that Section 7 was limited to "protected activities," even though some unprotected activities may be "concerted" and within the literal meaning of the Section.⁴

Prior to the 1947 Taft-Hartley amendments no federal legislation in any way regulated union internal affairs or activities. Neither the original proposals of the House or Senate specifically prohibited a union from fining its members for "strikebreaking", although the original House version provided a number of restrictions on unions in their dealings with members.⁵ These provisions do not appear in the bill as enacted.

When Congress was considering the 1947 amendments, it was well aware of union disciplinary measures, including fines, for such activities as "strikebreaking". If Congress had intended to prohibit such fines—while at the same time permitting expulsion as a disciplinary measure—the intention to do so could be expected to be clear. See *International Ass'n of Machinists v. Gonzales*, 356 U.S. 617, 620 (1958). The indications, however, are to the contrary.⁶

³ L.H. 318-19. (References to "L.H." are to the Legislative History of the Labor Management Relations Act, 1947, published by the National Labor Relations Board (1948)).

⁴ L.H. 542-43.

⁵ L.H. 52-56.

⁶ L.H. 1097, 93 Cong. Rec. 4318 (1947) (remarks of Senator Taft):

The legislative history of Section 8(b)(1)(A) shows also that the prohibition of that Section, with or without [fol. 103] the proviso, was directed against the specific evils of force, violence, and threats thereof, mass picketing, and economic reprisals in the form of inducing an employer to discriminate against an employee in his job rights. It was not intended to have the breadth contended for by Allis-Chalmers and to encompass any activity, including fines collectible by legal process, which may be described as "coercive."

Section 12 of the version of the bill passed by the House defined a number of "unlawful concerted activities" by unions which could be enjoined or be the basis of a suit for damages. This provision was not enacted in the final version which became law. The Conference Committee Report⁷ explains that Section 8(b)(1)(A) was intended to cover the activities specified in Section 12(a)(1)⁸ of the House bill. That Section made no mention of fines as discipline for "strikebreaking."

House Report No. 245 on the House bill as reported by the Committee also made no reference to fines for "strikebreaking" in a listing of results to be achieved by the bill. It states, rather, that "It [the bill] outlaws mass picketing and other forms of violence designed to prevent individuals from entering or leaving a place of employ-

Footnote 6 continued

"The pending measure does not propose any limitation with respect to the internal affairs of unions. They still will be able to fire any members they wish to fire, and they still will be able to try any of their members. All that they will not be able to do, after the enactment of this bill, is this: If they fire a member for some reason other than nonpayment of dues they cannot make his employer discharge him from his job and throw him out of work. That is the only result of the provision under discussion."

⁷ L.H. 546.

⁸ L.H. 204.

"Sec. 12. (a) The following activities, when affecting commerce, shall be unlawful concerted activities:

"(1) By the use of force or violence or threats thereof, preventing or attempting to prevent any individual from quitting or continuing in the employment of, or from accepting or refusing employment of,

ment.”⁹ In the same report the Committee said, in explaining Section 8(b) (1):

This is new, making it an unfair labor practice for labor organizations, their officers, agents, and representatives, or for employees, to interfere with, restrain or coerce employees. There is included in this provision a qualification which is not found in the corresponding paragraph covering employers—namely, [fol. 104] ly, that the interference proscribed is interference by intimidation.¹⁰

The language of the Section referred to was:

(1) by intimidating practices, to interfere with the exercise by employees of rights guaranteed in Section 7(a) or to compel or seek to compel any individual to become or remain a member of any labor organization.¹¹

The Supreme Court in *NLRB v. Drivers, Chauffeurs, Helpers, Local Union No. 639, Int. Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Curtis Bros.)*, 362 U.S. 274, 286-87 (1960), stated that the Congressional debate shows that the purpose of Section 8(b) (1) (A) is “the elimination of the use of repressive tactics bordering on violence or involving particularized threats of economic reprisal” and that “the note repeatedly sounded is as to the necessity for protecting individual workers from union organizational tactics tinged with violence, duress or reprisal.” A fine collectible by legal process hardly comports with the notion of “reprisal” or “intimidation.” The “economic reprisal” re-

or from accepting or refusing employment by, any employer; or by the use of force, violence, physical obstruction, or threats thereof; preventing or attempting to prevent any individual from freely going from any place and entering upon an employer's premises, or from freely leaving an employer's premises and going to any other place. . . .”

⁹ L.H. 297.

¹⁰ L.H. 321.

¹¹ L.H. 178-79. This was § 8(b)(1) of H.R. 3020, as it passed the House.

ferred to is such things as securing discharge or reductions in pay or seniority.

The Board also has reached this conclusion with respect to the history of Section 8(b)(1)(A) in holding, in *Local 283, United Automobile, Aircraft and Agricultural Implementation Workers of America, UAW-AFL-CIO (Wisconsin Motors Corp.)*, 145 NLRB 1097 (1964), that fines imposed on members and attempted to be collected in State courts for exceeding production quotas do not constitute restraint or coercion within the meaning of that Section. And in *Minneapolis Star and Tribune Co.*, 109 NLRB 727 (1954) the Board held that a \$500 fine for failure to attend union meetings and picket during a strike did not violate Section 8(b)(1)(A). The Board said there that a fine may be coercive but it is not what Congress meant by "coercion."

There are other considerations adding rational support for our conclusion. A union member may express agree-
[fol. 105] ment or disagreement with union rules or policies, but he cannot simultaneously be a member and also have whatever advantages there might be in non-membership, and he should not be immunized against discipline if as a member he acts against a lawful union activity determined by the majority to be in his, as well as their, interest. "The power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent. . . ." Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049 (1951).

A union is a form of industrial government and the rights and duties of a member are similar to those of a citizen in a democratic society. Summers, p. 1074. The nature of this relationship was recognized by Congress in enacting Section 101(a)(2), 73 Stat. 522, 29 U.S.C. § 411 (a)(2), of the LMRDA in 1959. In this section of the "bill of rights" of union members, after providing that members shall have the right to meet together and express their views on matters concerning the organization, Congress added the proviso,

That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and

to his refraining from conduct that would interfere with its performance of its legal and contractual obligations.

Congress would have been inconsistent, in adopting this proviso if it had previously, in Section 8(b) (1) (A), forbidden unions to fine members who cross picket lines, for what greater responsibility could a union member have to the union as an institution than to support a lawful strike called by the majority?

Allis-Chalmers' admission of the union's right under the Act to expel members for "strikebreaking" and its challenge of the lesser disciplinary power to fine is inconsistent. If it were true that a union's disciplinary power is limited to expulsion, this would mean that a union would be faced with the dilemma of either permitting anarchy and dissension within its ranks or depleting its strength by expulsion of the offending members. We have not been persuaded by Allis-Chalmers that this absurdity was in the contemplation of Congress.

[fol. 106] The employer argues that a fine is not a lesser penalty, but is more coercive than expulsion, since many members would not object to, and might even welcome, expulsion. In many cases, however, expulsion could result in serious financial loss through cancellation of union insurance, pension and other benefits. It would be strange for Congress to prohibit one form of discipline and not the other, where the effect of the one permitted could be equal to, or greater, in severity than the one prohibited.

The employees in this case had the right, under Section 7, to strike or not to strike. But once the union voted to strike, the employees who were union members were bound by the limitation that union membership placed on their right not to strike. It would be difficult to accept the proposition that a union should be the one secular society in our nation which one may enter without being bound by majority rule and without submission to some limitations on rights for the common good. Upon entering, union members must take not only the benefits but the burdens also, *NLRB v. International Union UAW-AFL-CIO*, 320 F.2d 12, 16 (1st Cir. 1963), and these burdens are not solely financial. Implicit in the Section 7 right to organize

is the duty, once that right has been exercised, to support the organization. The point is not that an employee, as such, may not refrain from striking, but that a union member may not with impunity flout the will of the majority (in this case a two-thirds majority) expressed in a strike vote.

If the employer's position that a union may not fine "strikebreakers" is correct, then the converse—that a union may not fine wildcat strikers—would also be true. This would render a union virtually powerless to enforce a no-strike clause on its members. The last portion of the proviso to Section 101(a)(2) of the LMRDA quoted above, however, clearly protects the rights of a union reasonably to discipline members who violate contract clauses. We do not think Congress intended to treat "strikebreakers" differently from wildcat strikers, so far as union discipline is concerned.

We disagree with the employer that this court's decision in *Allen Bradley Co. v. NLRB*, 286 F.2d 442 (7th Cir. 1961), controls our disposition of the issue in this case. [fol. 107] There this court held that proposals of the employer to limit the union's right to fine or discipline members refusing to join in a strike were subjects of mandatory bargaining. In dictum the court said that fines for crossing picket lines impose a sanction on the exercise of the right to work guaranteed by the Act and thus do not relate solely to the internal affairs of the union, so that the proviso of Section 8(b)(1)(A) was inapplicable to protect the union. We do not see how, if fining a union member for crossing a picket line is unlawful coercion, as *Allis-Chalmers* claims here, it can be a matter for collective bargaining. Nor can we see how, if the employer is "concerned" with a union's fining its members for crossing picket lines, so as to give the employer a bargainable interest in the matter—one of the principal bases of the *Allen Bradley* decision—it can be less "concerned" over the expulsion of members, which the employer here concedes is lawful.

The Board's decision in *Local 138, International Union of Operating Engineers, AFL-CIO*, 148 NLRB No. 74, holding it an unfair labor practice for a union to fine a

member for filing an unfair labor practice charge against the union, also does not militate against our position. That case was based on the principle that a union rule which seeks to frustrate the right of members to avail themselves of the services of the Board is contrary to recognized public policies and beyond the competence of a union to enforce by any coercive means.

We conclude that the Board's decision is not erroneous. The petition for review is accordingly denied.

* * * *

[fol. 108]

OPINION BY JUDGE KILEY

■ IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

* * * *

Before

Hon. WIN G. KNOCH, Circuit Judge
Hon. LATHAM CASTLE, Circuit Judge—
Hon. ROGER J. KILEY, Circuit Judge

No. 14853

ALLIS-CHALMERS MANUFACTURING COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

Petition for review of an order of the National
Labor Relations Board.

JUDGMENT—September 13, 1965

This cause came on to be heard on the petition for review of an order of the National Labor Relations Board and the record from the National Labor Relations Board and was argued by counsel.

On consideration whereof, it is ordered by this Court that the said petition for review of an order entered by the National Labor Relations Board on October 23, 1964, be denied, in accordance with the opinion of this Court filed this day. Upon presentation, an appropriate decree will be issued.

[fol. 109]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

* * * *

Before

Hon. JOHN S. HASTINGS, Chief Judge
Hon. F. RYAN DUFFY, Circuit Judge
Hon. ELMER J. SCHNACKENBERG, Circuit Judge
Hon. WIN G. KNOCH, Circuit Judge
Hon. LATHAM CASTLE, Circuit Judge
Hon. ROGER J. KILEY, Circuit Judge
Hon. LUTHER M. SWYGERT, Circuit Judge

[Title Omitted]

ORDER GRANTING THE PETITION FOR REHEARING EN BANC
—October 14, 1965

IT IS ORDERED by the Court that the petition for a rehearing en banc of this cause be, and the same is hereby, granted.

Kiley, C. J. voted to deny the petition.

[fol. 110]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1965—JANUARY SESSION, 1966

No. 14853

ALLIS-CHALMERS MANUFACTURING COMPANY, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

On Petition for Review of an Order of the
National Labor Relations Board.

OPINION—March 11, 1966

Before HASTINGS, *Chief Judge*, and DUFFY, SCHNACKENBERG, KNOCH, CASTLE, KILEY and SWYGERT, *Circuit Judges*.

KNOCH, *Circuit Judge*. Allis-Chalmers Manufacturing Company, petitioner, sought to review and set aside the action of the National Labor Relations Board, respondent, in dismissing Allis-Chalmers' complaint against Locals 248 and 401 of International Union, UAW-AFL-CIO, who are bargaining agents for certain Allis Chalmers' employees. The Union was charged with unfair labor practices in fining members who had crossed picket lines during two different strikes. The original opinion of this Court which issued September 13, 1965, denied Allis-Chalmers' petition for review.*

* A set out in our original opinion:

The facts are stipulated. The two locals in question are bargaining agents at the employer's West Allis and LaCrosse, Wisconsin plants. The collective bargaining agreements at both plants contain union security clauses which require that employees join the union within thirty days after hiring and "remain members of the Union to the extent of paying dues." Both locals struck the Allis-Chalmers plants, on economic issues, from February 2 to approximately April 20, 1959, and again be-

[fol.111] We granted petition for rehearing en banc in this case for a number of reasons, including the following:

(a) the national significance of our decision to management and labor alike, as well as to other courts dealing with kindred or related matters;

(b) an asserted conflict with our prior ruling in *Allen Bradley Company v. N.L.R.B.*, 1961, 286 F. 2d 442;

(c) an opportunity for a critical re-evaluation of their respective positions by members of the original panel;

(d) our natural desire to maintain the historical liberty of the American workingman to remain free to work without coercion from employers or from unions; and to

*(Continued)

tween February 26 and approximately March 5, 1962. During each strike some employee-members of the union crossed the picket lines and worked.

Each strike was called in accordance with the procedures prescribed by the constitution of the International union: a majority agreement to hold a formal strike vote, notification to all members of the vote, approval of the strike by at least a two-thirds majority in secret balloting, followed by approval of the International Executive Board. After each strike formal written charges of violations of the International constitution and by-laws were served on the offending members, followed by formal adversary hearings before union Trial Boards resulting in fines ranging from \$20.00 to \$100.00.¹

¹ One hundred dollars is the maximum fine permissible under the union constitution. Since each crossing of the picket lines was treated as a separate offense, the fines in some cases could have been considerably greater than those actually imposed.

Some of the members have paid the fines in whole or in part, but other have refused to pay. The union has attempted to collect the fines but has made no effort to have members who refuse to pay them discharged, nor to affect their employment status in any way. No members have been expelled or suspended from the union, nor have any resigned, for any reason arising from the disciplinary proceedings. In a test suit brought against one member who refused to pay a fine, one of the locals recovered a judgment in the County-Court of Milwaukee County, Wisconsin, which was affirmed on appeal to the Circuit Court of Milwaukee County, and, this court is informed, is now under advisement by the Wisconsin Supreme Court.

preserve the traditional character of American labor organizations which, largely through voluntary association, have contributed toward raising the living standards of our working people in this country to the highest plane known anywhere in the world.

[fol. 112] . As set out in our original opinion:

The issue before us is whether a union which imposes fines upon its members for crossing a picket line of the union and seeks to secure payment of the fines by suing or by threat of suit is guilty of violating the prohibition, in Section 8(b) (1) (A) of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C. § 141, *et seq.*, against union action restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

The maximum fine permitted under the Union constitution was \$100 with each crossing of the picket lines treated as a separate offense. Consecutive fines may run into thousands of dollars creating a far greater burden on the working man than expulsion from his labor organization or even loss of job.

Section 7 of the Labor-Management Relations Act, 29 U.S.C. § 157, provides:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a) (3) of this title.

The parties agreed that generally employees have the right not to strike and that the Union may expel its members for any reason authorized by its rules, but that the Union may not demand the discharge of an employee or other adverse change of his employment status except for non-payment of uniform initiation fees and dues.

Section 8 of the Act, 29 U.S.C. § 158, provides:

(b) It shall be an unfair labor practice for a labor organization or its agents—

[fol 113] (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section [7] of this title; *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * *

Allis-Chalmers contended that union members who cross their own union picket lines are exercising their rights under § 7 to refrain from engaging in a particular concerted activity, and that union discipline for such activity violates § 8(b)(1)(A) if it takes any form other than expulsion from the union. This contention, of course, rests on a literal reading of § 7.

In our original opinion, we mistakenly took the position that such a literal reading was unwarranted in the light of the history and purposes of the section.

We relied on certain aspects of the legislative history, as, for example, committee reports indicating that wild-cat and sitdown strikes, although "concerted" activities, were not included in the activities protected by § 7; and the fact that the original proposals of the House and Senate (prior to the 1947 Taft-Hartley amendments) which did include a number of restrictions on union-membership dealings, nevertheless did not specifically prohibit union fines for strike-breaking, although Congress must have been aware of union disciplinary practices and did specifically make provision permitting disciplinary expulsion. Reference was also made to Senator Taft's remarks that the pending measure did not propose any limitation with respect to the internal affairs of unions. However, he did go on to speak only of discipline by expulsion and to say that the only result of the provision under discussion was that a union "firing" a member for some reason other than non-payment of dues could not force the member's employer to discharge him. It now appears that he had reference to § 8(a)(3); as when he was clearly speaking of § 8(b)(1)(A) he said that the

union could conduct any form of propaganda it chose to persuade but could not by threat of economic reprisal prevent its members from exercising their right to work [fol. 114] and that, as he saw it, was the effect of the amendment, which was adopted shortly after these remarks.

We also laid emphasis on Congressional concern with the use or threat of use of various forms of violent coercion and the elimination of "repressive tactics bordering on violence or involving particularized threats of economic reprisal" as quoted from the opinion in *N.L.R.B. v. Drivers, Chauffeurs, Helpers, Local Union No. 639, Int. Bro. Teamsters, etc.* (Curtis Bros.) 362 U.S. 274, 286-7 (1960) and concluded incorrectly, we now believe, that economic reprisal meant only such things as securing discharge or reductions in pay or seniority but not imposition of fines.

In formulating our original opinion, we gave favorable consideration to the following arguments:

1. A member ought not to enjoy all the benefits of union membership while relinquishing none of the advantages of non-union membership.

2. Congress would have been guilty of inconsistency in adopting 29 U.S.C.A. 411(a)(2) which allows unions to enforce reasonable rules as to the responsibility of members with respect to refraining from conduct that interfered with the union's legal and contractual obligations, if Congress were also prohibiting imposition of fines for members who crossed picket lines.

3. If a union's disciplinary powers are limited to expulsion, a union must choose between permitting anarchy in its ranks or depleting its strength, and Congress could not have intended to present unions with so invidious a choice.

4. A fine may be a lesser penalty than expulsion with attendant loss of union insurance and other benefits, and Congress would not have allowed the more severe while withholding the less serious form of punishment.

5. If a union may not fine strikebreakers, then it cannot fine wildcat strikers and cannot enforce a "no strike" clause in its contract.

6. An analogy was drawn between an industrial union and a democratic society where the majority vote rules, [fol. 115] forgetting that a union is largely the creature of statute, that it differs in many ways from other secular societies freely joined and equally freely abandoned by individuals who disagree with the majority, and who are free to withdraw their moral and financial support at any time.

7. Our statement in *Allen Bradley Co. v. N.L.R.B.*, 1961, 286 F. 2d 442, that fines for crossing picket lines imposed a sanction on the exercise of the right to work guaranteed by the Act was mere dictum, as in that case, we held a proposal to limit unions' rights to fine or discipline its members for crossing picket lines was a subject of mandatory bargaining. It was suggested that it was somehow inconsistent to require bargaining with respect to a prohibited activity.

On rehearing, fortified with the additional arguments of counsel, and after discussion with all members of our Court, we conclude that the foregoing reasons set out in support of our prior opinion lack validity.

The statutes in question present no ambiguities whatsoever, and therefore do not require recourse to legislative history for clarification. The wording used evolved out of extensive Congressional debate and study. Although in our original opinion we rejected a literal reading of the statutes, in effect, we conceded that such a literal reading would require reversal of the Board's Order.

As interpreted in our original opinion these statutes would protect a union member from his union's coercive threats to take away his wages by securing his discharge from employment, but would not protect him from his union's coercive threats to take away his wages by imposition of fines. A substantial fine such as permitted here may easily pose a greater threat to a member than simple expulsion from the union.

Congress has determined what rights the employee may retain while availing himself of the benefits of union membership. All the protections which Congress has seen fit to throw about the union member operate to diminish the authority and power of the union to police its members

by coercion and to that degree impose on the union the burden of achieving its ends by persuasion, rather than by penal exaction.

[fol. 116] Recent history has demonstrated the extreme and far reaching effect of the irresponsible exercise of power and the resulting confusion and loss wreaked on labor, management, and the general public. On the other hand, we, as do all right-thinking citizens, hold those labor leaders in highest respect and esteem, whose authority is based on voluntary association rather than coercion, and who, fortified with the weapons Congress has deemed advisable, carry out their legitimate activities on behalf of their members. Such labor leaders have created a beneficial climate in which labor, management, and the general public may thrive without peril to that priceless American heritage; namely, the right of freedom to work and to organize on a voluntary basis.

We should never forget, nor should we let our fellow citizens forget, that in the all-inclusive, authoritarian state, represented as our common enemy today, the individual rights of the worker and the collective rights of organized workers have been completely appropriated. The state produces but one by-product and that is absolute and abject slavery. Thus ends the right to strike for increased wages or better working conditions. There is no redress of grievances, no individual management of business to create a strong economy for the commonweal. Each and every person does exactly what he is told to do, nothing more and nothing less. It is more important for the individual laboring man to be free and for his labor organization to be free than for any other segment of our society. Our greatness in the past, in the present, and, we prophesy, in the future, stems from those who toil.

The expressed Congressional policy of protecting the union member is particularly apt where, as in the case before us, membership is the result not of individual voluntary choice but of the insertion of a union security provision in the contract under which a substantial minority of the employees may have been forced into membership. Such membership properly incurs an obligation to pay dues and fees but may not be extended to include liability to submit to fines for indulging in a protected

activity. *Radio Officers v. N.L.R.B.*, 347 U.S. 17 (1954). [fol. 117] A union concerned about preventing wildcat strikes or other illegal activities may be reassured by the fact that such practices are not protected activities. Employer disciplinary action will adequately assist a union faced with recalcitrant members who defy a "no strike" provision in a contract. It is not necessary to whittle down the protections provided for all employees by § 7.

Our original decision in this case does conflict with our ruling in *Allen Bradley*. The quoted statement was not mere dictum. Because fines for crossing picket lines did not relate to the internal affairs of the union but seriously affected the rights of both the employees and the employer, we held the authority to fine was a subject for bargaining. Activity already prohibited by statute is not by virtue of that fact alone barred from further prohibition by a provision in a contract. See *Reed & Prince Mfg. Co.*, 96 NLRB 850, 855, where the Board said "We cannot conceive of a good faith basis for a refusal to incorporate a statutory obligation into a contract in the very words of the statute."

If the Congress did not mean to say what Congress has so clearly said, then Congress itself must indicate that fact by legislative enactment. This Court should not attempt to change the plain wording of this statute by judicial interpretation.

Study of the Taft-Hartley legislative history as a whole reveals a clear Congressional intent to balance the national labor policy by placing limitations on coercive union conduct similar to those previously prescribed for employers.

Having carefully reviewed our prior opinion in this case by a rehearing en banc, we now withdraw and reverse it. The action of the Board in dismissing the complaints of petitioner is reversed, and this matter is remanded to the Board for further proceedings not inconsistent with the tenor of this opinion.

REVERSED AND REMANDED.

[fol. 118]

HASTINGS, CHIEF JUDGE, DISSENTING.

On September 13, 1965, a division of this court unanimously rendered a judgment and filed an opinion denying the petition of Allis-Chalmers Manufacturing Company to review and set aside an order of the National Labor Relations Board. The Board order under consideration dismissed complaints charging the Union¹ with unfair labor practices based on charges filed by Allis-Chalmers.

Subsequently, our court, by a vote of 6-1, granted the petition of Allis-Chalmers for a rehearing *en banc* with respect to its judgment entered September 13, 1965. I joined in the action to grant a rehearing *en banc* for the reason that two members of the division which heard the case originally voted for the rehearing *en banc*, and because of the importance of the question involved in this review.

On such rehearing *en banc*, a majority of our court decided to withdraw the prior opinion and judgment of the division which heard the original review and reached a contrary result.

In short, the majority holds that a union which imposes fines upon its members for crossing a picket line of the union and seeks to secure payment of the fines by suit or by threat of suit is guilty of violating the prohibition, in Section 8(b)(1)(A)² of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C.A. § 141, *et seq.*, against union action restraining or coercing employees in the exercise of rights guaranteed by Section 7³ of the Act.

¹ Locals 248 and 401 of International Union, UAW-AFL-CIO.

² "It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein * * * 29 U.S.C.A. § 158.

³ "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through

[fol. 119] The effect of this holding is to say that the employees of Allis-Chalmers have a statutory right to belong to the Union on their own terms; to deny the Union the right to regulate its internal affairs; to rule that the disciplinary action taken by the Union infringes upon the rights of the dissident members protected by Section 7 of the Act; and to rule that such disciplinary action by the Union constitutes restraint or coercion within the meaning of Section 8(b) (1) of the Act.

I feel compelled to dissent from the result reached by the learned majority in this rehearing *en banc*.

I cannot agree that the Union action in this case violates Section 7 of the Act.

In substance, Section 7 grants to an *employee* the right of self-organization for collective bargaining purposes and to refrain from concerted activities, including an economic strike. It does not necessarily follow that an *employee who is a union member* may claim the same right of self-organization for collective bargaining purposes and at the same time claim the right to belong to the labor organization on his own terms. I cannot believe the Congress intended any such result.

I shall not belabor the legislative history of the Act, except to say that it is perfectly clear to me that *employees* are granted the right to belong to a union or not to belong to a union. If the employees elect to belong to a union and through such membership engage in concerted activities (an economic strike in this instance) for the purpose of collective bargaining, I find no prohibition in Section 7 to prevent a union from disciplining those members who decline to honor an authorized strike.

It has never been disputed that a union may discipline its members for engaging in an unauthorized strike. I fail to see any congressional purpose to distinguish between wildcat strikers and strikebreakers. The activities

representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title." 29 U.S.C.A. § 157.

of each are equally abhorrent to the establishment and maintenance of industrial peace through the orderly processes of collective bargaining.

In this case, membership in the Union is voluntary and not compulsory. The applicable union contracts with Allis-[fol. 120] Chalmers incorporate union security clauses. These do not compel union membership as such but only require an employee to become and remain "a member of the Union to the extent of paying his monthly dues * * *." This limitation on union security clauses was declared by our court in *Union Starch & Refining Co. v. National Labor Rel. Bd.*, 7 Cir., 186 F. 2d 1008 (1951), cert. den., 342 U.S. 815 (1951), and remains unimpaired today.

Here, the strikebreaking employees had a choice. They could reject full union membership and merely pay their monthly dues, and thus remain outside and beyond the reach of union discipline. They chose, however, to associate themselves with others in full union membership. Thereby, they elected to receive all the benefits of full membership through the medium of collective bargaining. It necessarily follows that they incurred an ensuing obligation of union solidarity with respect to concerted work refusal. A member's obligations to his union as the reciprocal counterpart of his rights within the organization has been the subject of much writing⁴ and need not be further extended here. See *Parks v. International Brotherhood of Electrical Wkrs.*, 4 Cir., 314 F. 2d 886 (1963), cert. den., 372 U.S. 976 (1963).

Section 7 of the Act safeguards an employee's right to strike and his right to refrain from striking. However, such rights are far from absolute rights. The Supreme Court has held that the right to strike falls in the face of a union's consent to a "no strike" clause in its labor agreement. *Labor Board v. Sands Mfg. Co.*, 306 U.S. 332 (1939). An employee union member may not exercise his right to strike contrary to an internal union regulation prohibiting membership strikes unauthorized by the union.

⁴ Cox, *Internal Affairs of Labor Unions*, 58 Mich. L. Rev. 819 (1960); Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049 (1951); Gregory, *Labor and the Law* p. 106.

Parks v. International Brotherhood of Electrical Wkrs., supra. The Supreme Court recently held that an employer's right to "the use of a temporary layoff of employees [lockout] solely as a means to bring economic pressure to bear in support of the employer's bargaining position, after an impasse has been reached" is not "in any way [fol. 121] inconsistent with the right to bargain collectively or with the right to strike" as granted by Section 7 of the Act. *American Ship Bldg. v. Labor Board*, 380 U.S. 300, 308, 310 (1965).

The underlying statutory authority of bargaining representatives to represent all the members of an appropriate unit is derived from Sections 7 and 9(a)⁵ of the Act and it must be allowed a "wide range of reasonableness" in serving the unit it represents without expecting to satisfy all who are represented. *Ford Motor Co. v. Huffman*, 345 U. S. 330, 338 (1953).

The First Circuit in *N.L.R.B. v. International Union, United A., A. & A. I. Wkrs.*, 320 F. 2d 12 (1963), considered the amenability of union members to internal union regulations in light of Section 7 and Section 8(b)(1)(A) of the Act. It concluded on pages 15-16:

"Under Section 7, absent a collective bargaining agreement to the contrary, the employee has indeed the unfettered right to abstain from indulging in union activity. He need not 'form,' 'join' or 'assist' a labor organization and, again, an agreement apart, this inactivity cannot be the source of recriminations. It is by now too clear for citation that this facet of Section 7 was designed to prevent forcing the unwilling worker into a union.

"However, we believe that it is quite another thing when the employee eschews his 'reluctance' and voluntarily joins a labor organization. At this point, under our view, the employee takes off the protective mantle

⁵ "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *." 29 U.S.C.A. § 159(a).

of Section 7's 'refraining' provision and renders himself amenable to the reasonable internal regulations of the organization with which he chooses to cast his lot. * * *

"* * *. It is true that under Section 7 of the Act, and in the light of the limited security agreement which obtained between the Company and the Union [fol. 122] in the instant case, the subject employees need not have joined the Union. However, once they voluntarily took that step, they embraced not only the benefits but also the burdens which flowed from their union membership. One of those 'burdens' was the duty of comporting with the Union's reasonable internal regulations; a requirement they failed to discharge here."

I would conclude, therefore, that Congress in the 1947 amendments to the Act, aside from barring a union from attempting to enforce its internal regulations by affecting the members' employment status, refrained from exploring the area of internal union affairs. It did not interfere with nor prohibit the right of the union to discipline its members for the violation of reasonable rules or policies it could legitimately expect its members to observe.

This conclusion is buttressed by the enactment of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C.A. § 401, *et seq.* The proviso added to Section 101(a)(2) reads: "Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

Further, Section 101(a)(5) recognizes the right of a union to discipline by fine, suspension and expulsion and provides certain procedural safeguards for the offending member.

The explicit provisions of this 1959 legislation are in harmony with the rationale I have attributed to the 1947 enactments.

Now, a few words about the strikes involved in this case. The first strike occurred in 1959. Of approximately 7400 bargaining unit employees, 175 union members elected to disregard the strike and work. The union warned the strikebreakers they were subject to a fine of as much as \$100 for each day they worked during the strike. The strike continued for 54 working days and the [fol. 123] dissidents remained at work. Subsequently, the offenders were fined, but no fine was more than a total of \$100.

The second and third strikes occurred in 1962 and each lasted less than a week. Members who refused to strike and elected to work were fined in amounts up to \$100 each.

I can only conclude that the fines instituted by the Union against its dissident members for strikebreaking in this case do not represent the type of restraint or coercion proscribed as an unfair labor practice in Section 8(b) (1) (A) of the Act. My reading of the legislative history, cited authorities and the comprehensive regulatory provisions of the Landrum-Griffin Act of 1959, *supra*, makes clear to me that Congress was not addressing its proscription to intra-union regulation but rather to coercive acts of violence, intimidation or job discrimination.

In *National Labor Rel. Bd. v. Amalgamated Local 286, Etc.*, 7 Cir., 222 F. 2d 95, 97-98 (1955), we held that the action of a union in threatening to withhold certain insurance coverage from members because they had refused to pay certain *disciplinary assessments and fines imposed on them by the union* was not a violation of Section 8(b) (1) (A) of the Act, and was in full conformity with the union's right to regulate its internal affairs. See also, *American Newspaper Pub. Ass'n. v. National Labor Rel. Bd.*, 7 Cir., 193 F. 2d 782, 800 (1951).

Finally, the majority accepts the view of Allis-Chalmers that the opinion under review here is in conflict with our prior holding in *Allen Bradley Company v. N.L.R.B.*, 7 Cir., 286 F. 2d 442, 446 (1961). I do not agree.

The only question for decision in *Allen Bradley* was whether a contract provision under which the union agreed to waive its right to fine its members for exercising their statutory rights was within the area of mandatory bar-

gaining under the Act. The court held that it was, and that the employer did not violate Section 8(a)(5) of the Act by insisting upon such clause in its negotiations with the union. The question here is whether a union violates [fol. 124] Section 8(b)(1)(A) of the Act by imposing such a fine. I see no inconsistency in the holdings in the two cases. Any gratuitous statements in 286 F. 2d at page 446 must be considered as dicta and not controlling here. If they are not to be considered as dicta and are controlling here, this being a rehearing *en banc*, I would reject such statements, but not the decision in *Allen Bradley*.

I finally conclude that the imposition of the fines in question are not only free from proscribed restraint and coercion but are within the protected area of permissible internal union regulation.

In conclusion, to say that this court has bent a sympathetic ear to the frequent claims of employers to be kept secure from restraint or interference in their right to manage their own affairs, as a proper prerogative of management, requires no citation of authorities. I have joined in the recognition of such right claimed by employers.

That same concern for freedom of management to regulate the internal affairs of its own business, in all fairness, dictates my view that unions should have the same freedom of internal control. And, contrary to the insistent claims of *Allis-Chalmers*, I can only conclude that any other disposition of this case than indicated herein would be contrary to law and would adversely affect the orderly establishment and maintenance of good management-labor relations.

For the foregoing reasons, I would affirm the result reached by the division of this court in its judgment rendered on September 13, 1965.

[fol. 125] No. 14853

KILEY, CIRCUIT JUDGE, DISSENTING

I respectfully dissent. The court's opinion footnotes the facts and abbreviates the points made in support of the original opinion, now withdrawn. I think it prudent to adopt, as part of my dissent, so much of the original opinion* as is necessary to give a full understanding of the points originally made:

* * *

Allis-Chalmers contends that a union member who crosses a picket line of his own union is exercising his Section 7 right to refrain from engaging in a concerted activity and that if the union disciplines the member for engaging in this activity by any means other than expulsion from the union, it violates Section 8(b) (1) (A). This contention rests upon a literal reading of Section 7. But a literal reading fails to take into account the history and purpose of the Section, which shows that it was not intended to immunize a union member from discipline for defiance of a decision of the majority to strike.

There is no merit in the contention, because Congress did not intend in Section 7 to protect everything which might be described as "concerted activities." As an example, the House Committee Report on H.R. 3020, the House version of the bill, pointed out that the courts and the Board had already held that wildcat and sitdown strikes were not protected activities and that the bill would make no change in those rules;¹ and the Conference Report on the House and Senate bills states that Section 7 was limited to "protected activities," even though some unprotected activities may be "concerted" and within the literal meaning of the Section.²

* *Allis-Chalmers Mfg. Co. v. NLRB*, No. 14853; 7th Cir., Sept. 13, 1965, at 3-9. Footnotes have been renumbered from the "slipsheet" opinion.

¹ L.H. 318-19. (References to "L.H." are to the Legislative History of the Labor Management Relations Act, 1947, published by the National Labor Relations Board (1948)).

² L.H. 542-43.

Prior to the 1947 Taft-Hartley amendments no federal legislation in any way regulated union internal affairs or activities. Neither the original proposals of the House or Senate specifically prohibited [fol. 126] a union from fining its members for "strike-breaking," although the original House version provided a number of restrictions on unions in their dealings with members.³ These provisions do not appear in the bill as enacted.

When Congress was considering the 1947 amendments, it was well aware of union disciplinary measures, including fines, for such activities as "strike-breaking." If Congress had intended to prohibit such fines—while at the same time permitting expulsion as a disciplinary measure—the intention to do so could be expected to be clear. See *International Ass'n of Machinists v. Gonzales*, 356 U.S. 617, 620 (1958). The indications, however, are to the contrary.⁴

The legislative history of Section 8(b)(1)(A) shows also that the prohibition of that Section, with or without the proviso, was directed against the specific evils of force, violence, and threats thereof, mass picketing, and economic reprisals in the form of inducing an employer to discriminate against an employee in his job rights. It was not intended to have the breadth contended for by Allis-Chalmers and to encompass any activity, including fines collectible by legal process, which may be described as "coercive."

Section 12 of the version of the bill passed by the House defined a number of "unlawful concerted ac-

³ L.H. 52-56.

⁴ L.H. 1097, 93 Cong. Rec. 4318 (1947) (remarks of Senator Taft):

"The pending measure does not propose any limitation with respect to the internal affairs of unions. They still will be able to fire any members they wish to fire, and they still will be able to try any of their members. All that they will not be able to do, after the enactment of this bill, is this: If they fire a member for some reason other than nonpayment of dues they cannot make his employer discharge him from his job and throw him out of work. That is the only result of the provision under discussion."

"activities" by unions which could be enjoined or be the basis of a suit for damages. This provision was not enacted in the final version which became law. The Conference Committee Report⁶ explains that Section [fol. 127] 8(b) (1) (A) was intended to cover the activities specified in Section 12(a) (1)⁷ of the House bill. That Section made no mention of fines as discipline for "strikebreaking."

House Report No. 245 on the House bill as reported by the Committee also made no reference to fines for "strikebreaking" in a listing of results to be achieved by the bill. It states, rather, that "It [the bill] outlaws mass picketing and other forms of violence designed to prevent individuals from entering or leaving a place of employment."⁷ In the same report the Committee said, in explaining Section 8(b) (1):

This is new, making it an unfair labor practice for labor organizations, their officers, agents, and representatives, or for employees, to interfere with, restrain or coerce employees. There is included in this provision a qualification which is not found in the corresponding paragraph covering employers—namely, that the interference proscribed is interference by intimidation.⁸

⁶ L.H. 546.

⁷ L.H. 204.

"Sec. 12. (a) The following activities, when affecting commerce, shall be unlawful concerted activities:

"(1) By the use of force or violence or threats thereof, preventing or attempting to prevent any individual from quitting or continuing in the employment of, or from accepting or refusing employment by, any employer; or by the use of force, violence, physical obstruction, or threats thereof, preventing or attempting to prevent any individual from freely going from any place and entering upon an employer's premises, or from freely leaving an employer's premises and going to any other place. . . ."

⁷ L.H. 297.

⁸ L.H. 321.

The language of the Section referred to was:

(1) by intimidating practices, to interfere with the exercise by employees of right guaranteed in Section 7(a) or to compel or seek to compel any individual to become or remain a member of any labor organization.⁹

[fol. 128] The Supreme Court in *NLRB v. Drivers, Chauffeurs, Helpers, Local Union No. 639, Int. Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Curtis Bros.)*, 362 U.S. 274, 286-87 (1960), stated that the Congressional debate shows that the purpose of Section 8(b)(1)(A) is "the elimination of the use of repressive tactics bordering on violence or involving particularized threats of economic reprisal" and that "the note repeatedly sounded is as to the necessity for protecting individual workers from union organizational tactics tinged with violence, duress or reprisal." A fine collectible by legal process hardly comports with the notion of "reprisal" or "intimidation." The "economic reprisal" referred to is such things as securing discharge or reductions in pay or seniority.

The Board also has reached this conclusion with respect to the history of Section 8(b)(1)(A) in holding, in *Local 283, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO (Wisconsin Motors Corp.)*, 145 NLRB 1097 (1964), that fines imposed on members and attempted to be collected in State courts for exceeding production quotas do not constitute restraint or coercion within the meaning of that Section. And in *Minneapolis Star and Tribune Co.*, 109 NLRB 727 (1954) the Board held that a \$500 fine for failure to attend union meetings and picket during a strike did not violate Section 8(b)(1)(A). The Board said there that a fine may be coercive but it is not what Congress meant by "coercion."

⁹ L.H. 178-79. This was § 8(b)(1) of H.R. 3020, as it passed the House.

There are other considerations adding rational support for our conclusion. A union member may express agreement or disagreement with union rules or policies, but he cannot simultaneously be a member and also have whatever advantages there might be in non-membership, and he should not be immunized against discipline if as a member he acts against a lawful union activity determined by the majority to be in [fol. 129] his, as well as their, interest. "The power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent. . . ." Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049 (1951)

A union is a form of industrial government and the rights and duties of a member are similar to those of a citizen in a democratic society. Summers, p. 1074. The nature of this relationship was recognized by Congress in enacting Section 101(a)(2), 73 Stat. 522, 29 U.S.C. § 411(a)(2), of the LMRDA in 1959. In this section of the "bill of rights" of union members, after providing that members shall have the right to meet together and express their views on matters concerning the organization, Congress added the proviso

That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal and contractual obligations.

Congress would have been inconsistent in adopting this proviso if it had previously, in Section 8(b)(1)(A), forbidden unions to fine members who cross picket lines, for what greater responsibility could a union member have to the union as an institution than to support a lawful strike called by the majority?

Allis-Chalmers' admission of the union's right under the Act to expel members for "strikebreaking"

and its challenge of the lesser disciplinary power to fine is inconsistent. If it were true that a union's disciplinary power is limited to expulsion, this would mean that a union would be faced with the dilemma of either permitting anarchy and dissension within its ranks or depleting its strength by expulsion of the [fol. 130] offending members. We have not been persuaded by Allis-Chalmers that this absurdity was in the contemplation of Congress.

The employer argues that a fine is not a lesser penalty, but is more coercive than expulsion, since many members would not object to, and might even welcome, expulsion. In many cases, however, expulsion could result in serious financial loss through cancellation of union insurance, pension and other benefits. It would be strange for Congress to prohibit one form of discipline and not the other, where the effect of the one permitted could be equal to, or greater, in severity than the one prohibited.

The employees in this case had the right, under Section 7, to strike or not to strike. But once the union voted to strike, the employees who were union members were bound by the limitation that union membership placed on their right not to strike. It would be difficult to accept the proposition that a union should be the one secular society in our nation which one may enter without being bound by majority rule and without submission to some limitations on rights for the common good. Upon entering, union members must take not only the benefits but the burdens also, *NLRB v. International Union UAW-AFL-CIO*, 320 F.2d 12, 16 (1st Cir. 1963), and these burdens are not solely financial. Implicit in the Section 7 right to organize is the duty, once that right has been exercised, to support the organization. The point is not that an employee, as such, may not refrain from striking, but that a union member may not with impunity flout the will of the majority (in this case a two-thirds majority) expressed in a strike vote.

If the employer's position that a union may not fine "strikebreakers" is correct, then the converse—that a union may not fine wildcat strikers—would also be true. This would render a union virtually powerless to enforce a no-strike clause on its members. The last portion of the proviso to Section 101 [fol. 131] (a) (2) of the LMRDA quoted above, however, clearly protects the rights of a union reasonably to discipline members who violate contract clauses. We do not think Congress intended to treat "strikebreakers" differently from wildcat strikers, so far as union discipline is concerned.

We disagree with the employer that this court's decision in *Allen Bradley Co. v. NLRB*, 286 F.2d 442 (7th Cir. 1961), controls our disposition of the issue in this case. There this court held that proposals of the employer to limit the union's right to fine or discipline members refusing to join in a strike were subjects of mandatory bargaining. In dictum the court said that fines for crossing picket lines impose a sanction on the exercise of the right to work guaranteed by the Act and thus do not relate solely to the internal affairs of the union, so that the proviso of Section 8(b) (1) (A) was inapplicable to protect the union. We do not see how, if fining a union member for crossing a picket line is unlawful coercion, as Allis-Chalmers claims here, it can be a matter for collective bargaining. Nor can we see how, if the employer is "concerned" with a union's fining its members for crossing picket lines, so as to give the employer a bargainable interest in the matter—one of the principal bases of the *Allen Bradley* decision—it can be less "concerned" over the expulsion of members, which the employer here concedes is lawful.

The Board's decision in *Local 138, International Union of Operating Engineers, AFL-CIO*, 148 NLRB No. 74, holding it an unfair labor practice for a union to fine a member for filing an unfair labor practice charge against the union, also does not militate against our position. That case was based on

the principle that a union rule which seeks to frustrate the right of members to avail themselves of the services of the Board is contrary to recognized public policies and beyond the competence of a union to enforce by any coercive means.

[fol. 132] Both the original and present opinions state the issue identically. I take the present holding of the court to be that "a union which imposes fines upon its members" for crossing a picket line, and seeks to collect the fines by suit or threat of suit, is guilty of an unfair labor practice in violation of § 8(b) (1) (A). On this holding, the original opinion to the contrary was withdrawn.

The original opinion discloses that both parties and the court were concerned only with fines imposed on union members who were subject to the union constitution and rules. This is clear from the original opinion, for example, "no members have been expelled or suspended from the union, nor have any resigned, for any reason arising from the disciplinary proceedings"; also "... the parties do not dispute ... that the union may expel its members for any reason authorized by its rules"; and "Allis-Chalmers contends that a union members who crosses a picket line of his own union is exercising his Section 7 right ...; and that if the union disciplines the member for ... this ... by any means other than expulsion, it violates Sec. 8(b) (1) (A)."

This being so, the court's statement concerning non-voluntary members¹⁰ might be misleading to the reader. There is no question in the issue before us of "forced ... membership."

An argument was introduced by Allis-Chalmers in its rehearing petition that the men before us were involuntary members having "solely a dues paying status," a "very limited technical" membership.¹¹ The union's answer to

¹⁰ The court states, *supra*, at 7: "... where, as in the case before us, membership is the result not of individual voluntary choice but of the insertion of a union security provision in the contract under which a substantial minority of the employees may have been forced into membership."

¹¹ Petition for Rehearing and For Rehearing En Banc, pp. 17-18.

the petition stated that the union shop clause does not require full union membership; that the union could not compel employees to take the union oath, submitting to the union constitution and rule. The union's answer conceded that *if* the men before us had no obligation to the union beyond paying dues and fees, they would not be subject [fol. 133] to the union "requirement of obedience to the common cause."¹² In reply Allis-Chalmers shifted gears: "This avoids the question in issue. The question is whether a union may coerce an employee who is a member, *be he one voluntarily or involuntarily*. It is the Petitioner's position that unions have no such right."¹³ The question of involuntariness was not and is not in the case.

In addition, it seems important to me that a few observations be made about the court's opinion.

The opinion states:

In formulating our original opinion, we gave favorable consideration to the following arguments:

* * *

6. An analogy was drawn between an industrial union and a democratic society where the majority rules, forgetting that a union is largely the creature of statute

I am sure the court by the term "largely the creature of statute" meant only to say that the Wagner Act and subsequent legislation gave unions status as institutions. Taken literally the words imply that unions, as associations of men, had no rightful prestatute existence. The Constitution presupposes and gives protection to the right of association. *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 460 (1958).

The court states "the statutes in question present no ambiguities whatsoever, and therefore do not require recourse to legislative history for clarification." Section 8(b) (1) (A) is not less ambiguous than other parts of

¹² Intervenor's Memorandum of Response to Petition for Rehearing, pp. 3-5.

¹³ Reply Brief for the Petitioner on Rehearing En Banc, p. 12. (Emphasis added.)

Section 8(b), application of which has been troublesome for the Supreme Court. For example, see *NLRB v. Drivers Local Union*, 362 U.S. 274 (1960), and especially 362 U.S. at 290, where the Court referred to the term "restrain or coerce" as "non-specific, indeed vague, words. [fol. 134] . . ." ¹⁴ And *Allis-Chalmers*, in its original brief in this case, relied upon legislative history to buttress its contention as to the intent of Congress.

The stipulated facts do not warrant the court's implication that the actual fines imposed in this case took away the union member's "wages." There is no claim in this case that the fines levied were unreasonable. The only issue is with respect to the right to fine these union members for crossing a picket line and to enforce payment in court. And the original opinion cannot be read as insulating from Board or court decision the unreasonable imposition by a union of such fines as would be equivalent to preventing a member from working or blocking his promotion or having him demoted.

The court reassures the union, concerned if it has no right to fine members who are wildcat strikers, by noting that wildcat strikes are not protected activities and that the employer, by disciplinary action, will "adequately assist" the union. This burden would probably not rest lightly on the employer, nor will the reassurance put the union quite at ease about enforcement of no-strike clauses.

It is my view that the original opinion was correct, and I adhere to the views I expressed there. I would deny the petition to set aside the Board's dismissal of the complaint.

I also concur in the views expressed by Chief Judge Hastings and Judge Swygert in their separate dissents.

¹⁴ The Fifth Circuit, rejecting a district court's dictionary interpretation of the word "coerce" in § 8(b)(4), had recourse to legislative history, stating: "We believe that the Congress used 'coerce' in the section under consideration as a word of art. . . ." *Local 48, Sheet Metal Workers v. Hardy Corp.*, 332 F.2d 682, 686 (5th Cir. 1964).

[fol. 135] No. 14853.

SWYGERT, CIRCUIT JUDGE, DISSENTING

I concur in both Chief Judge Hastings' dissent and Judge Kiley's dissent. I think, however, that additional comment is necessary to reemphasize what I conceive to be the erroneous premises upon which the majority opinion rests.

I do not disagree with the majority opinion's generalities about the laudable role of labor unions in our recent industrial history and the importance of protecting the American workingman from any suggestion of involuntary servitude. These generalities, however, are irrelevant and do not solve the legal question presented. The relevant points cited by the majority in support of its conclusion, and with which I disagree, are: (1) this case involves employees who are involuntary members of the union; (2) the possibility exists that the union might exact crippling and unreasonable fines; and (3) there is no occasion for resorting to legislative history in the application of sections 7 and 8(b) (1) (A) of the National Labor Relations Act to the facts of this case.

There is no issue in this case concerning compulsory union membership. The issue is whether an employee who has voluntarily applied for and been admitted to full union membership may be subjected to a disciplinary fine for crossing a picket line established by his union. The majority's reliance upon coerced membership is misplaced. Both the Board and the union concede that an employee, even thought required by a union security clause to tender uniform initiation fees and periodic dues in order to hold his job, is not subject to internal union discipline if he has either rejected full union membership or resigned from the union.

There is no issue in this case relating to "consecutive fines [which] may run into thousands of dollars." The facts show that the fines imposed ranged from \$20 to \$100. This court should not consider hypothetical questions. Reliance upon speculative union conduct and the burdens it might impose upon a recalcitrant member is not justifiable. [fol. 136] Moreover, a members who has been fined and believes that the fine is excessive may contest the fine

either in a state court action brought to collect it or in a federal court action claiming a violation of his rights under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 401-531 (1959).

A literal construction of sections 7 and 8(b)(1)(A) is neither permissible nor dispositive of the issue in this case. It is axiomatic that in interpreting statutes a court must ascertain and give effect to the legislative intent. The words actually chosen are, of course, the strongest measure of the legislative purpose. But words generally have different shades of meaning, and the dominant meaning—the one the legislative body intended—can often be ascertained only by considering the process out of which it evolved. For that reason we should not ignore the legislative history of such significant congressional expressions as sections 7 and 8(b)(1)(A). The briefs and arguments of the parties in this appeal were primarily devoted to the scope of application intended for these provisions by Congress. Refusing to admit that these sections contain words of art whose meaning can only be discerned by consulting their legislative background or failing to recognize that these sections are but amendments to the NLRA and that they should be considered within its contextual framework is inconsistent with proper statutory interpretation. The majority opinion implicitly recognizes this when it refers to the "extensive Congressional debate and study" which assertedly reduced the interpretation of section 8(b)(1)(A) to a simple exercise. The Supreme Court has not found a literal reading of this provision so conclusive. In *NLRB v. Drivers' Local Union* 639, 362 U.S. 274 (1960), the Court found it necessary to examine the legislative history of section 8(b)(1)(A) in detail in order to decide whether peaceful picketing by a union is conduct which might "restrain or coerce" employees in the exercise of section 7 rights and therefore falls within the prohibition of section 8(b)(1)(A).

Finally, I am not convinced that a mechanical application of the statutes in question provides an answer to the problem. Employees have the right to engage in concerted activities or to refrain from engaging in such activities. But to read section 7 as saying that an employee who is

also a union member may make an independent, *ad hoc* determination to cross a union-imposed picket line without [fol. 137] subjecting himself to reasonable internal union discipline is to say that an employee-member may simultaneously engage in protected activity and refrain from so engaging. If an employee wishes to be free of internal union discipline, there are no legal barriers against the exercise of such choice. But when an employee voluntarily joins a union (an exercise of his section 7 rights) he may not join on his own terms, abiding only by those rules with which he is in personal agreement.¹ Similarly, to read the proviso in section 8(b)(1)(A) as limiting a union's internal disciplinary power to expulsion of its members seems to me to be not only an undue restriction of the words "retention of membership" but also an application of the proviso in a way not intended and in a manner which diminishes a power which would exist entirely apart from the proviso. Section 8(b)(1)(A) by its terms is directed at union conduct vis-à-vis employees, not at union conduct vis-à-vis union members.

¹ In *NLRB v. UAW*, 320 F.2d 12, 15 (1st Cir. 1963), the First Circuit commented on the effect of union membership on an employee's section 7 right to refrain from concerted activities in the following manner:

Under Section 7, absent a collective bargaining agreement to the contrary, the employee has indeed the unfettered right to abstain from indulging in union activity. He need not "form," "join" or "assist" a labor organization and, again, an agreement apart, this inactivity cannot be the source of recriminations. It is by now too clear for citation that this facet of Section 7 was designed to prevent forcing the unwilling worker into a union.

However, we believe that it is quite another thing when the employee eschews his "reluctance" and voluntarily joins a labor organization. At this point, under our view, the employee takes off the protective mantle of Section 7's "refraining" provision and renders himself amenable to the reasonable internal regulations of the organization with which he chooses to cast his lot.

[fol.138]

OPINION BY JUDGE KNOCH

(Dissent opinions by Judges Hastings, Kiley, Swygert)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

* * * *

Before

Hon. JOHN S. HASTINGS, Chief Judge
Hon. F. RYAN DUFFY, Circuit Judge
Hon. ELMER J. SCHNACKENBERG, Circuit Judge
Hon. WIN G. KNOCH, Circuit Judge
Hon. LATHAM CASTLE, Circuit Judge
Hon. ROGER J. KILEY, Circuit Judge
Hon. LUTHER M. SWYGERT, Circuit Judge

. No. 14853

ALLIS-CHALMERS MANUFACTURING COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

Petition for review of an order of the National
Labor Relations Board.

JUDGMENT—March 11, 1966

This cause came on to be heard on the petition for review of an order of the National Labor Relations Board entered on October 23, 1964, and the record from the National Labor Relations Board and was argued by counsel before the Court sitting *en banc*, pursuant to an order heretofore entered on October 14, 1965, granting petition for rehearing *en banc*.

On consideration whereof, it is hereby ordered by this Court that the opinion of this Court heretofore issued on September 13, 1965, be, and the same is hereby withdrawn, and the order entered thereon be, and the same is hereby vacated.

It is further ordered by the Court that the action of the National Labor Relations Board in dismissing the complaints of the petitioner be, and the same is hereby REVERSED, and that this matter be, and it is hereby REMANDED to the National Labor Relations Board, for further proceedings not inconsistent with the tenor of the opinion of this Court filed this day.

[fol. 139]

[Clerk's Certificate to foregoing transcript omitted in printing]

[fol. 140]

SUPREME COURT OF THE UNITED STATES

No. 216, October Term, 1966

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

ALLIS-CHALMERS MANUFACTURING COMPANY, ET AL.

ORDER ALLOWING CERTIORARI—October 10, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is placed on the summary calender.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ALLIS-CHALMERS MANUFACTURING COMPANY AND INTERNATIONAL UNION, UAW-AFL-CIO (LOCALS 248 AND 401)

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this case on March 11, 1966.

OPINIONS BELOW

The opinion of the court of appeals, sitting *en banc* (Appendix A, *infra*, pp. 1a-62a), is reported at 358 F. 2d 656.¹ The Board's decision and order (P.A. 3-14, 15-25)² are reported at 149 NLRB 67.

¹ The earlier opinion of a panel of the court, which was withdrawn, is set forth in relevant part in Judge Kiley's dissenting opinion (App. A, *infra*, pp. 18a-29a).

² "P.A." refers to the appendix to the Company's brief in the court below.

JURISDICTION

The judgment of the court of appeals was entered on March 11, 1966 (App. A, *infra*, pp. 33a-34a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. 160(e)).

QUESTION PRESENTED

Whether a union which fines a member for crossing the union's picket line established in support of a lawful strike authorized by a majority of the union's membership and attempts to collect such fine by court action, thereby restrains or coerces an employee in the exercise of a right guaranteed by Section 7 of the National Labor Relations Act, in violation of Section 8(b)(1)(A) of the Act.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act (61 Stat. 136, 29 U.S.C. 151, *et seq.*), in addition to those set forth in Appendix B, *infra*, pp. 35a-36a, are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations * * * and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8(b). It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein * * *.

STATEMENT

Locals 248 and 401 of the United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, have, for many years, represented the production and maintenance employees of the respondent, Allis-Chalmers Manufacturing Company, at its plants in West Allis and La Crosse, Wisconsin (P.A. 4-5).³ The collective bargaining agreements between the parties contain a union security provision, which requires an employee to become and remain "a member of the Union * * * to the extent of paying his monthly dues and initiation fees, if any" (P.A. 17, 30, 35; Stip. Exh. 1A, Art. II). Pursuant to this provision, all of the non-probationary employees in the bargaining units have been members of the Union at all times relevant to this proceeding (P.A. 17, 30-31, 35).

The UAW constitution provides a three-step procedure for calling a strike. First, a membership meeting of the local union is held to determine whether a formal strike vote shall be taken. Second, if a majority agrees to take a strike vote, the Local Union Executive Board notifies all the members, they are polled

³ The Union was permitted to intervene as a party in the court of appeals.

by secret ballot, and a strike is authorized if endorsed by two-thirds of those voting. Third, the International Executive Board must approve the strike (P.A. 31-32, Stip. Exh. 4, Art. 50). The UAW constitution further requires members to "support strike action" taken in accordance with the constitution (*id.*, Art. 2, Sec. 3), and provides for sanctions for violation of this undertaking (see n. 5, *infra*).

In 1959, and again in 1962, the Union called a strike against the Company, in furtherance of new contract demands, and established picket lines in front of the Company's plants. Each strike was called in accordance with the foregoing procedure (App. A, *infra*, p. 2a). Although most of the employees in the bargaining unit joined the strikes and refused to cross the picket line, some ignored the line and went to work (P.A. 5, 17, 18, 19-20).⁴

After each strike, the Union charged the members who had crossed the picket line with violating the UAW constitution and bylaws, and, after formal adversary hearings before Union trial boards, found that they had engaged in "conduct unbecoming a Union member" and fined them in amounts varying from \$20.00 to \$100.00 (P.A. 17-18, 19-20, 32, 34, 36, 37).⁵ Some of the members paid the fines in whole or

⁴ In the 1959 strike, 175 employees out of a unit of 7,400 went to work at West Allis, and 2 employees went to work at La Crosse. In the 1962 strike, 30 out of a unit of 5,500 went to work at West Allis, and 4 out of 625 went to work at La Crosse (P.A. 17-18, 19-20).

⁵ The UAW constitution (Art. 30, Sec. 10) provides that, if a member is found to have violated the union's rules:

* * * the Trial Committee may, by a majority vote, reprimand

in part, but others refused to pay. The Union commenced actions to collect the fines in the Wisconsin courts.⁶ It made no effort to procure the discharge, or otherwise affect the employment status, of members who refused to pay the fines. No member has been expelled or suspended from the Union, nor has any resigned, for any reason relating to the disciplinary proceedings (P.A. 5, 19-20; 35, 37).

The Company filed charges with the Board alleging that the Union's assessment and attempted collection of the fines constituted restraint and coercion of the employees in the exercise of their right to refrain from participation in union activities, in violation of Section 8(b)(1)(A) of the Act. The Board (with Member Leedom dissenting) held that the conduct complained of did not violate that section, and dismissed the complaint issued by the General Counsel (P.A. 3-14).

The Company petitioned the court below to review the Board's dismissal order. A panel of the court (Judges Kiley, Knoch and Castle) upheld the Board's

mand the accused; or it may, by a two-thirds ($\frac{2}{3}$) vote, assess a fine not to exceed one hundred dollars (\$100) with automatic suspension, removal from office or expulsion in the event of the failure of the accused to pay the fine within a specified time; or it may, by a two-thirds ($\frac{2}{3}$) vote, suspend or remove the accused from office or suspend or expel him from membership in the International Union.

⁶ In a test suit brought against one member who refused to pay a fine, the Union obtained a judgment in the County Court of Milwaukee County, Wisconsin, which the Circuit Court of Milwaukee County affirmed. The case is pending before the Wisconsin Supreme Court (P.A. 19; App. A, *infra*, p. 2a, n. 1).

decision. Following a rehearing *en banc*, the court (with Chief Judge Hastings, and Judges Kiley and Swygert dissenting) withdrew its earlier opinion and held that the Union's action violated Section 8(b)(1)(A) of the Act (App. A, *infra*, pp. 1a-32a). The court accordingly set aside the Board's order dismissing the complaint, and remanded the case to the Board for further proceedings (App. A, *infra*, pp. 33a-34a).

REASONS FOR GRANTING THE WRIT

The decision below proscribes the enforcement of internal, union discipline against members who, having voluntarily joined the union, crossed picket lines established by the vote of a majority of the members in pursuit of the legitimate economic objectives of the union. The question involved is, as the court below recognized (App. A, *infra*, p. 3a), of "national significance * * * to management and labor alike * * *." It is also of grave consequence to the system of collective bargaining developed under the National Labor Relations Act, striking at the heart of labor's capacity for concerted action and responsible self-control.⁷ In the light of the manifest importance of the question presented, as well as the close division of the court below, review by this Court is clearly warranted.

The court below misinterpreted Section 8(b)(1)(A) of the National Labor Relations Act in holding that the

⁷ See Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049, 1066 (1951); and n. 12, p. 11, *infra*.

invocation of union disciplinary proceedings to penalize conduct unquestionably inimical to the effective functioning of the union in pursuit of its legitimate goals constitutes restraint or coercion within the meaning of that section (App. A, *infra*, pp. 7a-8a). The court also erred in concluding that, under the union security agreement between the Union and the Company, the maintenance of union membership by the delinquent members was involuntary (App. A, *infra*, p. 9a).

1. Section 8(b)(1)(A) of the Act makes it "an unfair labor practice for a union to "restrain or coerce" employees in the exercise of rights guaranteed by Section 7. Section 7 in turn guarantees to employees both the right to form, join or assist labor organizations and "the right to refrain from any or all such activities." Since the imposition and attempted collection of a fine for failure to adhere to a union policy tend, in a literal sense, to restrain or coerce union members (who are also employees) to assist the union, the court below concluded that such action was proscribed by Section 8(b)(1)(A). But that conclusion is based on the court's assumption that the "statutes in question present no ambiguities whatever, and therefore do not require recourse to legislative history, for clarification" (App. A, *infra*, p. 7a). *National Labor Relations Board v. Drivers Local Union No. 639 (Curtis Bros.)*, 362 U.S. 274, teaches, however, that Section 8(b)(1)(A) cannot be read literally to cover all union action which tends

to restrain or coerce employees in the exercise of their Section 7 rights.⁸ The legislative history of the Taft-Hartley Act and the 1959 amendments show that Congress did not intend to preclude a union from disciplining its members—by such traditional means as fines, suspension, or expulsion—for violating a reasonable union rule like that here.⁹

(a) Section 8(b)(1)(A) was introduced on the floor of the Senate during the debate on the amendments to Section 8(a)(3) and the new Section 8(b)(2),¹⁰ which substituted the union shop for the closed shop and made it an unfair labor practice for a union, no less than an employer, to discriminate against an employee to encourage or discourage union membership. In making the latter changes, Congress indicated that its policy was “to insulate employees’ jobs from their organizational rights” (*Radio Officers’ Union v. National Labor Relations Board*, 347 U.S. 17, 40). That is, under a union security agreement, the union could cause an employee to be fired from his job only for failure to pay regular dues and initiation

⁸ In *Curtis*, the Court held that Section 8(b)(1)(A) did not reach peaceful picketing by a minority union to secure recognition.

⁹ A union has a legitimate interest in requiring its members to support a lawful strike duly authorized by the membership. As the Board stated (P.A. 7):

We cannot conceive of a subject which would be more within its competence, since it involves the loyalty of its members during a time of crisis for the union. The Act does not deprive a union of all recourse against those of its own members who undermine a strike in which it is engaged. * * *

¹⁰ These provisions are set forth in App. B, *infra*, pp. 35a-36a.

fees; no other union rule or membership obligation could be enforced by affecting the employee's employment status. When Senator Pepper protested that this would deprive the union of power to protect itself against company spies in its ranks, wildcat strikers, and those who opposed what the majority of the union felt was in the union's best interests (2 Leg. Hist. 1094,¹¹ 93 Cong. Rec. 4191), Senator Taft answered (2 Leg. Hist. 1097, 93 Cong. Rec. 4193):

The pending measure does not propose any limitation with respect to the internal affairs of unions. They still will be able to fire any members they wish to fire, and they still will be able to try any of their members. All that they will not be able to do, after the enactment of this bill, is this: If they fire a member for some reason other than nonpayment of dues they cannot make his employer discharge him from his job and throw him out of work. That is the only result of the provision under discussion.

(b) Section 8(b)(1)(A), which the Senate considered immediately after the foregoing discussion, was not intended to erase the deliberate line between enforcing reasonable union rules by affecting the employee's job and by means short thereof, which Congress drew in amending Section 8(a)(3) and adding Section 8(b)(2). As the Court pointed out in the *Curtis* case, *supra*, the examples given in the debates show that Section 8(b)(1)(A) was designed essen-

¹¹ "Leg. Hist." refers to the Legislative History of the Labor-Management Act, 1947 (G.P.O., 1948).

tially to prevent strong-arm tactics and threats of job loss in organizational campaigns. None of the active proponents of the measure suggested that it would limit the preexisting right of a union to discipline its members—by such traditional means as fines, suspension, or expulsion—for violating reasonable union rules or policies. Indeed, when Senator Holland introduced the proviso to Section 8(b)(1)(A) (*supra*, p. 3), to make clear that the section did not affect the area of internal union affairs, Senator Ball readily accepted it, stating (2 Leg. Hist. 1200, 93 Cong. Rec. 4433):

That modification [the proviso] is designed to make it clear that we are not trying to interfere with the internal affairs of a union that is already organized. All we are trying to cover is the coercive and restraining acts of the union in its effort to organize unorganized employees. * * * The modification covers the requirements and standards of membership in the union itself.

(c) The Labor-Management Reporting and Disclosure Act, enacted in 1959, confirms the above analysis. Although that statute does regulate internal union affairs and provides a "bill of rights" for union members, Congress recognized (Section 101(a)(5), 29 U.S.C. 411(a)(5)) that a union member "may be fined, suspended, expelled, or otherwise disciplined" provided that certain procedural safeguards were observed. Moreover, Congress added a proviso (Section 101(a)(2), 29 U.S.C. 411(a)(2)) disclaiming any intent " * * * to impair the right of a labor organization

to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution * * *." It is hardly likely that Congress would have adopted these provisions, allowing the enforcement of reasonable union rules, had it 12 years earlier flatly interdicted union fines under Section 8(b)(1)(A).

(d) The court of appeals recognized (App. A, *infra*, p. 4a) and the Company conceded (Brief in the court of appeals, pp. 26-27) that, under the circumstances here involved, the Union could expel the offending members without running afoul of the Act. Indeed, the proviso to Section 8(b)(1)(A) is quite explicit on this point, for it states that that section "shall not impair the right of a labor organization to prescribe its own rules with respect to the * * * retention of membership therein * * *." The issue, therefore, is not *whether* a union may, by appropriate disciplinary proceedings, impose sanctions but only *what* sanctions it may impose. However, once the legality of union disciplinary action is conceded, it is hard to see what rational purpose the Act might serve in authorizing expulsion while prohibiting fines. The use of fines as a disciplinary device finds widespread recognition in union constitutions¹² as well as in Section 101(a)(5) of the Labor-Management Reporting and Disclosure Act (see *supra*, p. 10). According to one study of union disciplinary proceedings, "the most common form of penalty is the fine."¹³ Furthermore,

¹² See Summers, *Disciplinary Procedures of Unions*, 4 Ind. & Lab. Rel. Rev. 15, 26-27 (1950).

¹³ *Id.* at 26.

expulsion is commonly regarded as a more severe sanction than a fine. Expulsion will generally entail forfeiture of significant union insurance, pension and welfare benefits as well as disenfranchisement and exclusion from the councils of the collective bargaining agent.¹⁴ Under the circumstances, Congress could not have intended so anomalous a reading of the Act as that adopted below.¹⁵

2. The decision below relies on the proposition (App. A, *infra*, p. 9a) that membership in the Union was "the result not of individual voluntary choice but of the insertion of a union security provision in the contract under which a substantial minority of the employees may have been forced into membership." From that premise the court concluded (*ibid.*) that compulsory membership entailed a forced submission to union discipline and thus the restraint or coercion forbidden by Section 8(b)(1)(A). The major premise of the court's reasoning, however, is erroneous, as the dissenting judges below pointed out (App. A, *infra*, pp. 12a-13a, 26a-27a, 29a-30a).

The fact is undisputed that the union security provision required an employee to become a union member only "to the extent of paying dues" (App. A, *infra*, p. 2a fn.). Consistent with Section 8(a)(3) of the Act,

¹⁴ *Id.* at 28-29; see Cox, *The Role of Law in Preserving Union Democracy*, 72 Harv. L. Rev. 609, 612, 622-623 (1959).

¹⁵ There is no substance to the suggestion of the court of appeals (App. A, *infra*, p. 7a) that the fines here were excessive and therefore threatened to deprive employees of their wages. Since the record shows that the fines imposed ranged from \$20 to \$100 (App. A, *infra*, p. 2a fn.), no issue as to unduly burdensome fines is presented.

no more than a dues paying status could be required of the employees¹⁶, and nothing in the record suggests that any further obligation was imposed in fact. On the contrary, the Union pointed out (Intervenor's Memorandum of Response to Petition for Rehearing, p. 3), and the Company did not dispute (Reply Brief for Petitioner on Rehearing En Banc, p. 12):

Since the only obligation that the Union agreement with the Company imposes is the payment of monthly dues, no worker is required to take the oath and subject himself to the requirements of obedience to the common cause * * *.

It appears therefore, that, contrary to the court's assumption, each employee had a free choice either (1) to refrain from all union activities except to the extent of paying the required dues, or (2) to adhere to the union, take the prescribed oath of fidelity, participate in the union's affairs and abide by the union's rules and decisions. An employee who elected to pursue the latter course, like anyone else who joins a voluntary association, cannot properly be said to have been restrained or coerced when called upon to live up to his undertaking. For, as shown above, the legislative history of Section 8(b)(1)(A) and the basic plan of federal labor-management relations legislation demonstrate that Congress did not intend to bar a union from imposing normal disciplinary sanctions upon a member for

¹⁶ See *Union Starch & Refining Co. v. National Labor Relations Board*, 186 F. 2d 1008 (C.A. 7), certiorari denied, 342 U.S. 815. Cf. *National Labor Relations Board v. General Motors Corp.*, 373 U.S. 734.

breach of an obligation voluntarily assumed when he voluntarily joined the union.

CONCLUSION

The question whether Section 8(b)(1)(A) bars a union from fining its members for violation of union rules is an important and recurrent one in the administration of the Act.¹⁷ Since the pertinent considerations have been fully canvassed in the majority and dissenting opinions of the court below, there is no occasion for further clarification of the problem by other courts of appeals;¹⁸ it is now ripe for adjudi-

¹⁷ In addition to the present case, see, e.g., *Wisconsin Motor Corp.*, 145 NLRB 1097; *Associated Home Builders of the Greater East Bay*, 145 NLRB 1775, remanded for further proceedings, 352 F. 2d 745 (C.A. 9) Cf. *Local 138, Int'l Union of Operating Engineers (Charles S. Skura)*, 148 NLRB 679; *H. B. Roberts, Business Manager of Local 925, Operating Engineers (Wellman-Lord Engineering, Inc.)*, 148 NLRB 674, enforced *sub nom. Roberts v. National Labor Relations Board*, 350 F. 2d 427 (C.A. D.C.); but see *United Steelworkers, Local No. 4028 (Pittsburgh-Des Moines Steel Co.)*, 154 NLRB No. 54. (In *Skura* and *Roberts*, the Board held that Section 8(b)(1)(A) did bar a union from fining a member for filing unfair labor practice charges with the Board. In the Board's view, a union rule prohibiting the filing of charges with the Board went beyond the area of internal union affairs and impinged upon the Board's processes—a channel which Congress intended to leave open.)

¹⁸ The only other case involving the issue which is now in the court of appeals is also in the Seventh Circuit. *Scofield v. National Labor Relations Board*, No. 14698, petition to review *Wisconsin Motor Corp.*, 145 NLRB 1097.

cation by this Court. The petition for certiorari should, therefore, be granted.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

ROBERT S. RIFKIND,
Assistant to the Solicitor General.

ARNOLD ORDMAN,
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*Assistant General Counsel,
National Labor Relations Board.*

JUNE 1966.

APPENDIX A

In the United States Court of Appeals
for the Seventh Circuit

SEPTEMBER TERM, 1965—JANUARY SESSION, 1966

No. 14853

ALLIS-CHALMERS MANUFACTURING COMPANY,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

*On Petition for Review of an Order of the National
Labor Relations Board*

March 11, 1966

Before HASTINGS, *Chief Judge*, and DUFFY,
SCHNACKENBERG, KNOCH, CASTLE, KILEY and SWYGERT,
Circuit Judges.

KNOCH, *Circuit Judge*. Allis-Chalmers Manufacturing Company, petitioner, sought to review and set aside the action of the National Labor Relations Board, respondent, in dismissing Allis-Chalmers complaint against Locals 248 and 401 of International Union, UAW-AFL-CIO, who are bargaining agents for certain Allis-Chalmers' employees. The Union was charged with unfair labor practices in fining members who had crossed picket lines during two different strikes. The original opinion of this Court

which issued September 13, 1965, denied Allis-Chalmers' petition for review.*

* As set out in our original opinion:

"The facts are stipulated. The two locals in question are bargaining agents at the employer's West Allis and LaCrosse, Wisconsin plants. The collective bargaining agreements at both plants contain union security clauses which require that employees join the union within thirty days after hiring and 'remain members of the Union to the extent of paying dues.' Both locals struck the Allis-Chalmers plants, on economic issues, from February 2 to approximately April 20, 1959, and again between February 26 and approximately March 5, 1962. During each strike some employee-members of the union crossed the picket lines and worked.

"Each strike was called in accordance with the procedures prescribed by the constitution of the International union: a majority agreement to hold a formal strike vote, notification to all members of the vote, approval of the strike by at least a two-thirds majority in secret balloting, followed by approval of the International Executive Board. After each strike formal written charges of violations of the International constitution and by-laws were served on the offending members, followed by formal adversary hearings before union Trial Boards resulting in fines ranging from \$20.00 to \$100.00."¹

¹ One hundred dollars is the maximum fine permissible under the union constitution. Since each crossing of the picket lines was treated as a separate offense, the fines in some cases could have been considerably greater than those actually imposed.

"Some of the members have paid the fines in whole or in part, but others have refused to pay. The union has attempted to collect the fines but has made no effort to have members who refuse to pay them discharged, nor to affect their employment status in any way. No members have been expelled or suspended from the union, nor have any resigned, for any reason arising from the disciplinary proceedings. In a test suit brought against one member who refused to pay a fine, one of the locals recovered a judgment in the County Court of Milwaukee County, Wisconsin, which was affirmed on appeal to the Circuit Court of Milwaukee County, and, this court is informed, is now under advisement by the Wisconsin Supreme Court."

We granted petition for rehearing en banc in this case for a number of reasons, including the following:

(a) the national significance of our decision to management and labor alike, as well as to other courts dealing with kindred or related matters;

(b) an asserted conflict with our prior ruling in *Allen Bradley Company v. N.L.R.B.*, 1961, 286 F. 2d 442;

(c) an opportunity for a critical re-evaluation of their respective positions by members of the original panel;

(d) our natural desire to maintain the historical liberty of the American workingman to remain free to work without coercion from employers or from unions; and to preserve the traditional character of American labor organizations which, largely through voluntary association, have contributed toward raising the living standards of our working people in this country to the highest plane known anywhere in the world.

As set out in our original opinion:

The issue before us is whether a union which imposes fines upon its members for crossing a picket line of the union and seeks to secure payment of the fines by suing or by threat of suit is guilty of violating the prohibition, in Section 8(b)(1)(A) of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C. § 141, *et seq.*, against union action restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

The maximum fine permitted under the Union constitution was \$100 with each crossing of the picket lines treated as a separate offense. Consecutive fines may run into thousands of dollars creating a far greater burden on the working man than expulsion from his labor organization or even loss of job.

Section 7 of the Labor-Management Relations Act, 29 U.S.C. § 157, provides:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

The parties agreed that generally employees have the right not to strike and that the Union may expel its members for any reason authorized by its rules, but that the Union may not demand the discharge of an employee or other adverse change of his employment status except for non-payment of uniform initiation fees and dues.

Section 8 of the Act, 29 U.S.C. § 158, provides:

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section [7] of this title; *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * *

Allis-Chalmers contended that union members who cross their own union picket lines are exercising their rights under § 7 to refrain from engaging in a particular concerted activity, and that union discipline for such activity violates § 8(b)(1)(A) if it takes any form other than expulsion from the union. This contention, of course, rests on a literal reading of § 7.

In our original opinion, we mistakenly took the position that such a literal reading was unwarranted in the light of the history and purposes of the section.

We relied on certain aspects of the legislative history, as, for example, committee reports indicating that wildcat and sitdown strikes, although "concerted" activities, were not included in the activities protected by § 7; and the fact that the original proposals of the House and Senate (prior to the 1947 Taft-Hartley amendments) which did include a number of restrictions on union-membership dealings, nevertheless did not specifically prohibit union fines for strike-breaking, although Congress must have been aware of union disciplinary practices and did specifically make provision permitting disciplinary expulsion. Reference was also made to Senator Taft's remarks that the pending measure did not propose any limitation with respect to the internal affairs of unions. However, he did go on to speak only of discipline by expulsion and to say that the only result of the provision under discussion was that a union "firing" a member for some reason other than nonpayment of dues could not force the member's employer to discharge him. It now appears that he had reference to § 8(a)(3), as when he was clearly speaking of § 8(b)(1)(A) he said that the union could conduct any form of propaganda it chose to persuade but could not by threat of economic reprisal prevent its members from exercising their right to work and that, as he saw it, was the effect of the amendment, which was adopted shortly after these remarks.

We also laid emphasis on Congressional concern with the use or threat of use of various forms of violent coercion and the elimination of "repressive tactics bordering on violence or involving particularized threats of economic reprisal" as quoted from the opinion in *N.L.R.B. v. Drivers, Chauffeurs, Helpers*,

Local Union No. 639, Int. Bro. Teamsters, etc. (Curtis Bros.) 362 U.S. 274, 286-7 (1960) and concluded incorrectly, we now believe, that economic reprisal meant only such things as securing discharge or reductions in pay or seniority but not imposition of fines.

In formulating our original opinion, we gave favorable consideration to the following arguments:

1. A member ought not to enjoy all the benefits of union membership while relinquishing none of the advantages of non-union membership.

2. Congress would have been guilty of inconsistency in adopting 29 U.S.C.A. 411(a)(2) which allows unions to enforce reasonable rules as to the responsibility of members with respect to refraining from conduct that interfered with the union's legal and contractual obligations, if Congress were also prohibiting imposition of fines for members who crossed picket lines.

3. If a union's disciplinary powers are limited to expulsion, a union must choose between permitting anarchy in its ranks or depleting its strength, and Congress could not have intended to present unions with so invidious a choice.

4. A fine may be a lesser penalty than expulsion with attendant loss of union insurance and other benefits, and Congress would not have allowed the more severe while withholding the less serious form of punishment.

5. If a union may not fine strikebreakers, then it cannot fine wildcat strikers and cannot enforce a "no strike" clause in its contract.

6. An analogy was drawn between an industrial union and a democratic society where the majority vote rules, forgetting that a union is largely the creature of statute, that it differs in many ways from other secular societies freely joined and equally

freely abandoned by individuals who disagree with the majority, and who are free to withdraw their moral and financial support at any time.

7. Our statement in *Allen Bradley Co. v. N.L.R.B.*, 1961, 286 F. 2d 442, that fines for crossing picket lines imposed a sanction on the exercise of the right to work guaranteed by the Act was mere dictum, as in that case, we held a proposal to limits unions' rights to fine or discipline its members for crossing picket lines was a subject of mandatory bargaining. It was suggested that it was somehow inconsistent to require bargaining with respect to a prohibited activity.

On rehearing, fortified with the additional arguments of counsel, and after discussion with all members of our Court, we conclude that the foregoing reasons set out in support of our prior opinion lack validity.

The statutes in question present no ambiguities whatsoever, and therefore do not require recourse to legislative history, for clarification. The working used evolved out of extensive Congressional debate and study. Although in our original opinion we rejected a literal reading of the statutes, in effect, we conceded that such a literal reading would require reversal of the Board's Order.

As interpreted in our original opinion these statutes would protect a union member from his union's coercive threats to take away his wages by securing his discharge from employment, but would not protect him from his union's coercive threats to take away his wages by imposition of fines. A substantial fine such as permitted here may easily pose a greater threat to a member than simple expulsion from the union.

Congress has determined what rights the employee may retain while availing himself of the benefits of union membership. All the protections which Con-

gress has seen fit to throw about the union member operate to diminish the authority and power of the union to police its members by coercion and to that degree impose on the union the burden of achieving its ends by persuasion, rather than by penal exaction.

Recent history has demonstrated the extreme and far reaching effect of the irresponsible exercise of power and the resulting confusion and loss wreaked on labor, management, and the general public. On the other hand, we, as do all right-thinking citizens, hold those labor leaders in highest respect and esteem, whose authority is based on voluntary association rather than coercion, and who, fortified with the weapons Congress has deemed advisable, carry out their legitimate activities on behalf of their members. Such labor leaders have created a beneficent climate in which labor, management, and the general public may thrive without peril to that priceless American heritage; namely, the right of freedom to work and to organize on a voluntary basis.

We should never forget, nor should we let our fellow citizens forget, that in the all-inclusive, authoritarian state, represented as our common enemy today, the individual rights of the worker and the collective rights of organized workers have been completely appropriated. The state produces but one by-product and that is absolute and abject slavery. Thus ends the right to strike for increased wages or better working conditions. There is no redress of grievances, no individual management of business to create a strong economy for the commonweal. Each and every person does exactly what he is told to do, nothing more and nothing less. It is more important for the individual laboring man to be free and for his labor organization to be free than for any other segment of our society. Our greatness in the past, in

the present, and, we prophesy, in the future, stems from those who toil.

The expressed Congressional policy of protecting the union member is particularly apt where, as in the case before us, membership is the result not of individual voluntary choice but of the insertion of a union security provision in the contract under which a substantial minority of the employees may have been forced into membership. Such membership properly incurs an obligation to pay dues and fees but may not be extended to include liability to submit to fines for indulging in a protected activity. *Radio Officers v. N.L.R.B.*, 347 U.S. 17 (1954).

A union concerned about preventing wildcat strikes or other illegal activities may be reassured by the fact that such practices are not protected activities. Employer disciplinary action will adequately assist a union faced with recalcitrant members who defy a "no strike" provision in a contract. It is not necessary to whittle down the protections provided for all employees by § 7.

Our original decision in this case does conflict with our ruling in *Allen Bradley*. The quoted statement was not mere dictum. Because fines for crossing picket lines did not relate to the internal affairs of the union but seriously affected the rights of both the employees and the employer, we held the authority to fine was a subject for bargaining. Activity already prohibited by statute is not by virtue of that fact alone barred from further prohibition by a provision in a contract. See *Reed & Prince Mfg. Co.*, 96 NLRB 850, 855, where the Board said "We cannot conceive of a good faith basis for a refusal to incorporate a statutory obligation into a contract in the very words of the statute."

If the Congress did not mean to say what Congress has so clearly said, then Congress itself must indicate

that fact by legislative enactment. This Court should not attempt to change the plain wording of this statute by judicial interpretation.

Study of the Taft-Hartley legislative history as a whole reveals a clear Congressional intent to balance the national labor policy by placing limitations on coercive union conduct similar to those previously prescribed for employers.

Having carefully reviewed our prior opinion in this case by a rehearing *en banc*, we now withdraw and reverse it. The action of the Board in dismissing the complaints of petitioner is reversed, and this matter is remanded to the Board for further proceedings not inconsistent with the tenor of this opinion.

REVERSED AND REMANDED.

HASTINGS, *Chief Judge*, dissenting.

On September 13, 1965, a division of this court unanimously rendered a judgment and filed an opinion denying the petition of Allis-Chalmers Manufacturing Company to review and set aside an order of the National Labor Relations Board. The Board order under consideration dismissed complaints charging the Union¹ with unfair labor practices based on charges filed by Allis-Chalmers.

Subsequently, our court, by a vote of 6-1, granted the petition of Allis-Chalmers for a rehearing *en banc* with respect to its judgment entered September 13, 1965. I joined in the action to grant a rehearing *en banc* for the reason that two members of the division which heard the case originally voted for the rehearing *en banc*, and because of the importance of the question involved in this review.

On such rehearing *en banc*, a majority of our court decided to withdraw the prior opinion and judgment

¹ Locals 248 and 401 of International Union, UAW-AFL-CIO.

of the division which heard the original review and reached a contrary result.

In short, the majority holds that a union which imposes fines upon its members for crossing a picket line of the union and seeks to secure payment of the fines by suit or by threat of suit is guilty of violating the prohibition, in Section 8(b)(1)(A)² of the National Labor Relations Act, as amended 61 Stat. 136, 29 U.S.C.A. § 141, *et seq.*, against union action restraining or coercing employees in the exercise of rights guaranteed by Section 7³ of the Act.

The effect of this holding is to say that the employees of Allis-Chalmers have a statutory right to belong to the Union on their own terms; to deny the Union the right to regulate its internal affairs; to rule that the disciplinary action taken by the Union infringes upon the rights of the dissident members protected by Section 7 of the Act; and to rule that such disciplinary action by the Union constitutes restraint or coercion within the meaning of Section 8(b)(1) of the Act.

² "It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein * * *." 29 U.S.C.A. § 158.

³ "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title." 29 U.S.C.A. § 157.

I feel compelled to dissent from the result reached by the learned majority in this rehearing *en banc*.

I cannot agree that the Union action in this case violates Section 7 of the Act.

In substance, Section 7 grants to an *employee* the right of self-organization for collective bargaining purposes and to refrain from concerted activities, including an economic strike. It does not necessarily follow that *an employee who is a union member* may claim the same right of self-organization for collective bargaining purposes and at the same time claim the right to belong to the labor organization on his own terms. I cannot believe the Congress intended any such result.

I shall not belabor the legislative history of the Act, except to say that it is perfectly clear to me that *employees* are granted the right to belong to a union or not to belong to a union. If the employees elect to belong to a union and through such membership engage in concerted activities (an economic strike in this instance) for the purpose of collective bargaining, I find no prohibition in Section 7 to prevent a union from disciplining those members who decline to honor an authorized strike.

It has never been disputed that a union may discipline its members for engaging in an unauthorized strike. I fail to see any congressional purpose to distinguish between wildcat strikers and strikebreakers. The activities of each are equally abhorrent to the establishment and maintenance of industrial peace through the orderly processes of collective bargaining.

In this case, membership in the Union is voluntary and not compulsory. The applicable union contracts with Allis-Chalmers incorporate union security clauses. These do not compel union membership as such but only require an employee to become and remain "a member of the Union to the extent of paying

his monthly dues * * *." This limitation on union security clauses was declared by our court in *Union Starch & Refining Co. v. National Labor Rel. Bd.*, 7 Cir., 186 F. 2d 1008 (1951), cert. den. 342 U.S. 815 (1951), and remains unimpaired today.

Here, the strikebreaking employees had a choice. They could reject full union membership and merely pay their monthly dues, and thus remain outside and beyond the reach of union discipline. They chose, however, to associate themselves with others in full union membership. Thereby, they elected to receive all the benefits of full membership through the medium of collective bargaining. It necessarily follows that they incurred an ensuing obligation of union solidarity with respect to concerted work refusal. A member's obligations to his union as the reciprocal counterpart of his rights within the organization has been the subject of much writing⁴ and need not be further extended here. See *Parks v. International Brotherhood of Electrical Wkrs.*, 4 Cir., 314 F. 2d 886 (1963), cert. den. 372 U.S. 976 (1963).

Section 7 of the Act safeguards an employee's right to strike and his right to refrain from striking. However, such rights are far from absolute rights. The Supreme Court has held that the right to strike falls in the face of a union's consent to a "no strike" clause in its labor agreement. *Labor Board v. Sands Mfg. Co.*, 306 U.S. 332 (1939). An employee union member may not exercise his right to strike contrary to an internal union regulation prohibiting membership strikes unauthorized by the union. *Parks v. International Brotherhood of Electrical Wkrs.*, *supra*. The Supreme Court recently held that an employer's right

⁴ Cox, *Internal Affairs of Labor Unions*, 58 Mich. L. Rev. 819 (1960); Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049 (1951); Gregory, *Labor and the Law*, p. 106.

to "the use of a temporary layoff of employees [lock-out] solely as a means to bring economic pressure to bear in support of the employer's bargaining position, after an impasse has been reached" is not "in any way inconsistent with the right to bargain collectively or with the right to strike" as granted by Section 7 of the Act. *American Ship Bldg. v. Labor Board*, 380 U.S. 300, 308, 310 (1965).

The underlying statutory authority of bargaining representatives to represent all the members of an appropriate unit is derived from sections 7 and 9(a) of the Act and it must be allowed a "wide range of reasonableness" in serving the unit it represents without expecting to satisfy all who are represented. *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953).

The First Circuit in *N.L.R.B. v. International Union, United A., A. & A. I. Wkrs.*, 320 F. 2d 12 (1963), considered the amenability of union members to internal union regulations in light of Section 7 and Section 8(b)(1)(A) of the Act. It concluded on pages 15-16:

Under Section 7, absent a collective bargaining agreement to the contrary, the employee has indeed the unfettered right to abstain from indulging in union activity. He need not "form," "join" or "assist" a labor organization and, again, an agreement apart, this inactivity cannot be the source of recriminations. It is by now too clear for citation that this facet of Section 7 was designed to prevent forcing the unwilling worker into a union.

"Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *"
29 U.S.C.A. § 159(a).

However, we believe that it is quite another thing when the employee eschews his "reluctance" and voluntarily joins a labor organization. At this point, under our view, the employee takes off the protective mantle of Section 7's "refraining" provision and renders himself amenable to the reasonable internal regulations of the organization with which he chooses to cast his lot. * * *

* * *. It is true that under Section 7 of the Act, and in the light of the limited security agreement which* obtained between the Company and the Union in the instant case, the subject employees need not have joined the Union. However, once they voluntarily took that step, they embraced not only the benefits but also the burdens which flowed from their union membership. One of those "burdens" was the duty of comporting with the Union's reasonable internal regulations; a requirement they failed to discharge here.

I would conclude, therefore, that Congress in the 1947 amendments to the Act, aside from barring a union from attempting to enforce its internal regulations by affecting the members' employment status, refrained from exploring the area of internal union affairs. It did not interfere with nor prohibit the right of the union to discipline its members for the violation of reasonable rules or policies it could legitimately expect its members to observe.

This conclusion is buttressed by the enactment of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C.A. § 401, *et seq.* The proviso added to Section 101(a)(2) reads: "Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with

its performance of its legal or contractual obligations.”

Further, Section 101(a)(5) recognizes the right of a union to discipline by fine, suspension and expulsion and provides certain procedural safeguards for the offending member.

The explicit provisions of this 1959 legislation are in harmony with the rationale I have attributed to the 1947 enactments.

Now a few words about the strikes involved in this case. The first strike occurred in 1959. Of approximately 7400 bargaining unit employees, 175 union members elected to disregard the strike and work. The union warned the strikebreakers they were subject to a fine of as much as \$100 for each day they worked during the strike. The strike continued for 54 working days and the dissidents remained at work. Subsequently, the offenders were fined, but no fine was more than a total of \$100.

The second and third strikes occurred in 1962 and each lasted less than a week. Members who refused to strike and elected to work were fined in amounts up to \$100 each.

I can only conclude that the fines instituted by the Union against its dissident members for strikebreaking in this case do not represent the type of restraint or coercion proscribed as an unfair labor practice in Section 8(b)(1)(A) of the Act. My reading of the legislative history, cited authorities and the comprehensive regulatory provisions of the Landrum-Griffin Act of 1959, *supra*, makes clear to me that Congress was not addressing its proscription to intra-union regulation but rather to coercive acts of violence, intimidation or job discrimination.

In *National Labor Rel. Bd. v. Amalgamated Local 286, Etc.*, 7 Cir., 222 F. 2d 95, 97-98 (1955), we held that the action of a union in threatening to withhold

certain insurance coverage from members because they had refused to pay certain *disciplinary assessments and fines imposed on them by the union* was not a violation of Section 8(b)(1)(A) of the Act, and was in full conformity with the union's right to regulate its internal affairs. See also, *American Newspaper Pub. Ass'n v. National Labor Rel. Bd.*, 7 Cir., 193 F. 2d 782, 800 (1951).

Finally, the majority accepts the view of Allis-Chalmers that the opinion under review here is in conflict with our prior holding in *Allen Bradley Company v. N.L.R.B.*, 7 Cir., 286 F. 2d 442, 446 (1961). I do not agree.

The only question for decision in *Allen Bradley* was whether a contract provision under which the union agreed to waive its right to fine its members for exercising their statutory rights was within the area of mandatory bargaining under the Act. The court held that it was, and that the employer did not violate Section 8(a)(5) of the Act by insisting upon such clause in its negotiations with the union. The question here is whether a union violates Section 8(b)(1)(A) of the Act by imposing such a fine. We see no inconsistency in the holdings in the two cases. Any gratuitous statements in 286 F. 2d at page 446 must be considered as dicta and not controlling here. If they are not to be considered as dicta and are controlling here, this being a rehearing *en banc*, I would reject such statements, but not the decision in *Allen Bradley*.

I finally concluded that the imposition of the fines in question are not only free from proscribed restraint and coercion but are within the protected area of permissible internal union regulation.

In conclusion, to say that this court has bent a sympathetic ear to the frequent claims of employers to be kept secure from restraint or interference in their

right to manage their own affairs, as a proper prerogative of management, requires no citation of authorities. I have joined in the recognition of such right claimed by employers.

That same concern for freedom of management to regulate the internal affairs of its own business, in all fairness, dictates my view that unions should have the same freedom of internal control. And, contrary to the insistent claims of Allis-Chalmers, I can only conclude that any other disposition of this case than indicated herein would be contrary to law and would adversely affect the orderly establishment and maintenance of good management-labor relations.

For the foregoing reasons, I would affirm the result reached by the division of this court in its judgment rendered on September 13, 1965.

KILEY, *Circuit Judge*, dissenting.

I respectfully dissent. The court's opinion footnotes the facts and abbreviates the points made in support of the original opinion, now withdrawn. I think it prudent to adopt, as part of my dissent, so much of the original opinion * as is necessary to give a full understanding of the points originally made:

* * * * *

Allis-Chalmers contends that a union member who crosses a picket line of his own union is exercising his Section 7 right to refrain from engaging in a concerted activity and that if the union disciplines the member for engaging in this activity by any means other than expulsion from the union, it violates Section 8(b)(1)(A). This contention rests upon a literal reading of Section 7. But a literal reading fails to take into account the history and purpose of the

* *Allis-Chalmers Mfg. Co. v. NLRB*, No. 14853, 7th Cir., Sept. 13, 1965, at 3-9. Footnotes have been renumbered from the "slipsheet" opinion.

Section, which shows that it was not intended to immunize a union member from discipline for defiance of a decision of the majority to strike.

There is no merit in the contention, because Congress did not intend in Section 7 to protect everything which might be described as "concerted activities." As an example, the House Committee Report on H.R. 3020, the House version of the bill, pointed out that the courts and the Board had already held that wildcat and sitdown strikes were not protected activities and that the bill would make no change in those rules;¹ and the Conference Report on the House and Senate bills states that Section 7 was limited to "protected activities," even though some unprotected activities may be "concerted" and within the literal meaning of the Section.²

Prior to the 1947 Taft-Hartley amendments no federal legislation in any way regulated union internal affairs or activities. Neither the original proposals of the House or Senate specifically prohibited a union from fining its members for "strikebreaking," although the original House version provided a number of restrictions on unions in their dealings with members.³ These provisions do not appear in the bill as enacted.

When Congress was considering the 1947 amendments, it was well aware of union disciplinary measures, including fines, for such activities as "strikebreaking." If Congress had intended to prohibit such fines—while at the same time permitting expulsion as a disciplinary measure—the intention to do so could be expected to be clear. See *International*

¹ L.H. 318-19. (References to "L.H." are to the Legislative History of the Labor Management Relations Act, 1947, published by the National Labor Relations Board (1948)).

² L.H. 542-43.

³ L.H. 52-56.

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Ass'n of Machinists v. Gonzales, 356 U.S. 617, 620 (1958). The indications, however, are to the contrary.*

The legislative history of Section 8(b)(1)(A) shows also that the prohibition of that Section, with or without the proviso, was directed against the specific evils of force, violence, and threats thereof, mass picketing, and economic reprisals in the form of inducing an employer to discriminate against an employee in his job rights. It was not intended to have the breadth contended for by Allis-Chalmers and to encompass any activity, including fines collectible by legal process, which may be described as "coercive."

Section 12 of the version of the bill passed by the House defined a number of "unlawful concerted activities" by unions which could be enjoined or be the basis of a suit for damages. This provision was not enacted in the final version which became law. The Conference Committee Report* explains that Section 8(b)(1)(A) was intended to cover the activities specified in Section 12(a)(1)* of the House bill.

*L.H. 1097, 93 Cong. Rec. 4318 (1947) (remarks of Senator Taft):

"The pending measure does not propose any limitation with respect to the internal affairs of unions. They still will be able to fire any members they wish to fire, and they still will be able to try any of their members. All that they will not be able to do, after the enactment of this bill, is this: If they fire a member for some reason other than nonpayment of dues they cannot make his employer discharge him from his job and throw him out of work. That is the only result of the provision under discussion."

*L.H. 546.

*L.H. 204.

"Sec. 12. (a) The following activities, when affecting commerce, shall be unlawful concerted activities:

"(1) By the use of force or violence or threats thereof, preventing or attempting to prevent any individual from quitting or continuing in the employment of, or from accepting or re-

That Section made no mention of fines as discipline for "strikebreaking."

House Report No. 245 on the House bill as reported by the Committee also made no reference to fines for "strikebreaking" in a listing of results to be achieved by the bill. It states, rather, that "It [the bill] outlaws mass picketing and other forms of violence designed to prevent individuals from entering or leaving a place of employment." In the same report the Committee said in explaining Section 8(b)(1):

"This is new, making it an unfair labor practice for labor organizations, their officers, agents, and representatives, or for employees, to interfere with, restrain or coerce employees. There is included in this provision a qualification which is not found in the corresponding paragraph covering employers—namely, that the interference proscribed is interference by intimidation."

The language of the Section referred to was:

"(1) by intimidating practices, to interfere with the exercise by employees of rights guaranteed in Section 7(a) or to compel or seek to compel any individual to become or remain a member of any labor organization."

The Supreme Court in *NLRB v. Drivers, Chauffeurs, Helpers, Local Union No. 639, Int. Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America* (Curtis

fusing employment by, any employer; or by the use of force, violence, physical obstruction, or threats thereof, preventing or attempting to prevent any individual from freely going from any place and entering upon an employer's premises, or from freely leaving an employer's premises and going to any other place * * *."

* L.H. 297.

* L.H. 321.

* L.H. 178-79. This was § 8(b)(1) of H.R. 3020, as it passed the House.

Bros.), 362 U.S. 274, 286-287 (1960), stated that the Congressional debate shows that the purpose of Section 8(b)(1)(A) is "the elimination of the use of repressive tactics bordering on violence or involving particularized threats of economic reprisal" and that "the note repeatedly sounded is as to the necessity for protecting individual workers from union organizational tactics tinged with violence, duress or reprisal." A fine collectible by legal process hardly comports with the notion of "reprisal" or "intimidation." The "economic reprisal" referred to is such things as securing discharge or reductions in pay or seniority.

The Board also has reached this conclusion with respect to the history of Section 8(b)(1)(A) in holding, in *Local 283, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO (Wisconsin Motors Corp.)*, 145 NLRB 1097 (1964), that fines imposed on members and attempted to be collected in State courts for exceeding production quotas do not constitute restraint or coercion within the meaning of that Section. And in *Minneapolis Star and Tribune Co.*, 109 NLRB 727 (1954) the Board held that a \$500 fine for failure to attend union meetings and picket during a strike did not violate Section 8(b)(1)(A). The Board said there that a fine may be coercive but it is not what Congress meant by "coercion."

There are other considerations adding rational support for our conclusion. A union member may express agreement or disagreement with union rules or policies, but he cannot simultaneously be a member and also have whatever advantages there might be in non-membership, and he should not be immunized against discipline if as a member he acts against a lawful union activity determined by the majority to be in his, as well as their, interest. "The power to fine or expel strikebreakers is essential if the union is to be an effective bar-

gaining agent * * *." Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049 (1951).

A union is a form of industrial government and the rights and duties of a member are similar to those of a citizen in a democratic society. Summers, p. 1074. The nature of this relationship was recognized by Congress in enacting Section 101(a)(2), 73 Stat. 522, 29 U.S.C. § 411 (a)(2), of the LMRDA in 1959. In this section of the "bill of rights" of union members, after providing that members shall have the right to meet together and express their views on matters concerning the organization, Congress added the proviso

"That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal and contractual obligations."

Congress would have been inconsistent in adopting this proviso if it had previously, in Section 8(b)(1)(A), forbidden unions to fine members who cross picket lines, for what greater responsibility could a union member have to the union as an institution than to support a lawful strike called by the majority?

Allis-Chalmers' admission of the union's right under the Act to expel members for "strikebreaking" and its challenge of the lesser disciplinary power to fine is inconsistent. If it were true that a union's disciplinary power is limited to expulsion, this would mean that a union would be faced with the dilemma of either permitting anarchy and dissension within its ranks or depleting its strength by expulsion of the offending members. We have not been persuaded by Allis-Chalmers that this absurdity was in the contemplation of Congress.

The employer argues that a fine is not a lesser penalty, but is more coercive than expulsion, since many members would not object to, and might even welcome, expulsion. In many cases, however, expulsion could result in serious financial loss through cancellation of union insurance, pension and other benefits. It would be strange for Congress to prohibit one form of discipline and not the other, where the effect of the one permitted could be equal to, or greater, in severity than the one prohibited.

The employees in this case had the right, under Section 7, to strike or not to strike. But once the union voted to strike, the employees who were union members were bound by the limitation that union membership placed on their right not to strike. It would be difficult to accept the proposition that a union should be the one secular society in our nation which one may enter without being bound by majority rule and without submission to some limitations on rights for the common good. Upon entering, union members must take not only the benefits but the burdens also, *NLRB v. International Union UAW-AFL-CIO*, 320 F.2d 12, 16 (1st Cir. 1963), and these burdens are not solely financial. Implicit in the Section 7 right to organize is the duty, once that right has been exercised, to support the organization. The point is not that an employee, as such, may not refrain from striking, but that a union member may not with impunity flout the will of the majority (in this case a two-thirds majority) expressed in a strike vote.

If the employer's position that a union may not fine "strikebreakers" is correct, then the converse—that a union may not fine wildcat strikers—would also be true. This would render a union virtually powerless to enforce a no-strike clause on its members. The last portion of the proviso to Section 101(a)(2) of the LMRDA quoted above, however, clearly protects the rights of an union reasonably to disci-

plins members who violate contract clauses. We do not think Congress intended to treat "strikebreakers" differently from wildcat strikers, so far as union discipline is concerned.

We disagree with the employer that this court's decision in *Allen Bradley Co. v. NLRB*, 286 F. 2d 442 (7th Cir. 1961), controls our disposition of the issue in this case. There this court held that proposals of the employer to limit the union's right to fine or discipline members refusing to join in a strike were subjects of mandatory bargaining. In dictum the court said that fines for crossing picket lines impose a sanction on the exercise of the right to work guaranteed by the Act and thus do not relate solely to the internal affairs of the union, so that the proviso of Section 8(b)(1)(A) was inapplicable to protect the union. We do not see how, if fining a union member for crossing a picket line is unlawful coercion, as Allis-Chalmers claims here, it can be a matter for collective bargaining. Nor can we see how, if the employer is "concerned" with a union's fining its members for crossing picket lines, so as to give the employer a bargainable interest in the matter—one of the principal bases of the *Allen Bradley* decision—it can be less "concerned" over the expulsion of members, which the employer here concedes is lawful.

The Board's decision in *Local 138, International Union of Operating Engineers, AFL-CIO*, 148 NLRB No. 74, holding it an unfair labor practice for a union to fine a member for filing an unfair labor practice charge against the union, also does not militate against our position. That case was based on the principle that a union rule which seeks to frustrate the right of members to avail themselves of the services of the Board is contrary to recognized public policies and beyond the competence of a union to enforce by any coercive means.

Both the original and present opinions state the issue identically. I take the present holding of the court to be that "a union which imposes fines upon its members" for crossing a picket line, and seeks to collect the fines by suit or threat of suit, is guilty of an unfair labor practice in violation of § 8(b)(1)(A). On this holding, the original opinion to the contrary was withdrawn.

The original opinion discloses that both parties and the court were concerned only with fines imposed on union members who were subject to the union constitution and rules. This is clear from the original opinion, for example, "no members have been expelled or suspended from the union, nor have any resigned, for any reason arising from the disciplinary proceedings"; also " * * * the parties do not dispute * * * that the union may expel its members for any reason authorized by its rules"; and "Allis-Chalmers contends that a union member who crosses a picket line of his own union is exercising his Section 7 right * * *"; and that if the union disciplines the member for * * * this * * * by any means other than expulsion, it violates Sec. 8(b)(1)(A)."

This being so, the court's statement concerning non-voluntary members¹⁰ might be misleading to the reader. There is no question in the issue before us of "forced * * * membership."

An argument was introduced by Allis-Chalmers in its rehearing petition that the men before us were involuntary members having "solely a dues paying

¹⁰ The court states, *supra*, at 7: * * * where, as in the case before us, membership is the result not of individual voluntary choice but of the insertion of a union security provision in the contract under which a substantial minority of the employees may have been forced into membership."

status," a "very limited, technical" membership.¹¹ The union's answer to the petition stated that the union shop clause does not require full union membership; that the union could not compel employees to take the union oath, submitting to the union constitution and rule. The union's answer conceded that if the men before us had no obligation to the union beyond paying dues and fees, they would not be subject to the union "requirement of obedience to the common cause."¹² In reply Allis-Chalmers shifted gears: "This avoids the question in issue. The question is whether a union may coerce an employee who is a member, *be he one voluntarily or involuntarily*. It is the Petitioner's position that unions have no such right."¹³ The question of involuntariness was not and is not in the case.

In addition, it seems important to me that a few observations be made about the court's opinion.

The opinion states:

In formulating our original opinion, we gave favorable consideration to the following arguments:

* * * * *

6. An analogy was drawn between an industrial union and a democratic society where the majority rules, forgetting that a union is largely the creature of statute * * *.

I am sure the court by the term "largely the creature of statute" meant only to say that the Wagner Act and subsequent legislation gave unions status as institutions. Taken literally the words imply that unions,

¹¹ Petition for Rehearing and For Rehearing En Banc, pp. 17-18.

¹² Intervenor's Memorandum of Response to Petition for Rehearing, pp. 3-5.

¹³ Reply Brief for the Petitioner on Rehearing En Banc, p. 12. (Emphasis added.)

as associations of men, had no rightful prestatute existence. The Constitution presupposes and gives protection to the right of association. *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 460 (1958).

The court states "the statutes in question present no ambiguities whatsoever, and therefore do not require recourse to legislative history for clarification." Section 8(b)(1)(A) is not less ambiguous than other parts of Section 8(b), application of which has been troublesome for the Supreme Court. For example, see *NLRB v. Drivers Local Union*, 362 U.S. 274 (1960), and especially 362 U.S. at 290, where the Court referred to the term "restrain or coerce" as "nonspecific, indeed vague, words * * *."¹⁴ And *Allis-Chalmers*, in its original brief in this case, relied upon legislative history to buttress its contention as to the intent of Congress.

The stipulated facts do not warrant the court's implication that the actual fines imposed in this case took away the union member's "wages." There is no claim in this case that the fines levied were unreasonable. The only issue is with respect to the right to fine these union members for crossing a picket line and to enforce payment in court. And the original opinion cannot be read as insulating from Board or court decision the unreasonable imposition by a union of such fines as would be equivalent to preventing a member from working or blocking his promotion or having him demoted.

The court reassures the union, concerned if it has no right to fine members who are wildcat strikers, by

¹⁴ The Fifth Circuit, rejecting a district court's dictionary interpretation of the word "coerce" in § 8(b)(4), had recourse to legislative history, stating: "We believe that the Congress used 'coerce' in the section under consideration as a word of art. . . ." *Local 48, Sheet Metal Workers v. Hardy Corp.*, 332 F.2d 682, 686 (5th Cir. 1964).

noting that wildcat strikes are not protected activities and that the employer, by disciplinary action, will "adequately assist" the union. This burden would probably not rest lightly on the employer, nor will the reassurance put the union quite at ease about enforcement of no-strike clauses.

It is my view that the original opinion was correct, and I adhere to the views I expressed there. I would deny the petition to set aside the Board's dismissal of the complaint.

I also concur in the views expressed by Chief Judge Hastings and Judge Swygert in their separate dissents.

SWYGERT, *Circuit Judge*, dissenting.

I concur in both Chief Judge Hastings' dissent and Judge Kiley's dissent. I think, however, that additional comment is necessary to reemphasize what I conceive to be the erroneous premises upon which the majority opinion rests.

I do not disagree with the majority opinion's generalities about the laudable role of labor unions in our recent industrial history and the importance of protecting the American workingman from any suggestion of involuntary servitude. These generalities, however, are irrelevant and do not solve the legal question presented. The relevant points cited by the majority in support of its conclusion, and with which I disagree, are: (1) this case involves employees who are involuntary members of the union; (2) the possibility exists that the union might exact crippling and unreasonable fines; and (3) there is no occasion for resorting to legislative history in the application of sections 7 and 8(b)(1)(A) of the National Labor Relations Act to the facts of this case.

There is no issue in this case concerning compulsory union membership. The issue is whether an employee who has voluntarily applied for and been ad-

mitted to full union membership may be subjected to a disciplinary fine for crossing a picket line established by his union. The majority's reliance upon coerced membership is misplaced. Both the Board and the union concede that an employee, even though required by a union security clause to tender uniform initiation fees and periodic dues in order to hold his job, is not subject to internal union discipline if he has either rejected full union membership or resigned from the union.

There is no issue in this case relating to "consecutive fines [which] may run into thousands of dollars." The facts show that the fines imposed ranged from \$20 to \$100. This court should not consider hypothetical questions. Reliance upon speculative union conduct and the burdens it might impose upon a recalcitrant member is not justifiable. Moreover, a member who has been fined and believes that the fine is excessive may contest the fine either in a state court action brought to collect it or in a federal court action claiming a violation of his rights under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 401-531 (1959).

A literal construction of sections 7 and 8(b)(1)(A) is neither permissible nor dispositive of the issue in this case. It is axiomatic that in interpreting statutes a court must ascertain and give effect to the legislative intent. The words actually chosen are, of course, the strongest measure of the legislative purpose. But words generally have different shades of meaning, and the dominant meaning—the one the legislative body intended—can often be ascertained only by considering the process out of which it evolved. For that reason we should not ignore the legislative history of such significant congressional expressions as sections 7 and 8(b)(1)(A). The briefs and arguments of the parties in this appeal were primarily devoted to the

scope of application intended for these provisions by Congress. Refusing to admit that these sections contain words of art whose meaning can only be discerned by consulting their legislative background or failing to recognize that these sections are but amendments to the NLRA and that they should be considered within its contextual framework is inconsistent with proper statutory interpretation. The majority opinion implicitly recognizes this when it refers to the "extensive Congressional debate and study" which assertedly reduced the interpretation of section 8(b)(1)(A) to a simple exercise. The Supreme Court has not found a literal reading of this provision so conclusive. In *NLRB v. Drivers' Local Union 639*, 362 U.S. 274 (1960), the Court found it necessary to examine the legislative history of section 8(b)(1)(A) in detail in order to decide whether peaceful picketing by a union is conduct which might "restrain or coerce" employees in the exercise of section 7 rights and therefore falls within the prohibition of section 8(b)(1)(A).

Finally, I am not convinced that a mechanical application of the statutes in question provides an answer to the problem. Employees have the right to engage in concerted activities or to refrain from engaging in such activities. But to read section 7 as saying that an employee who is also a union member may make an independent, *ad hoc* determination to cross a union-imposed picket line without subjecting himself to reasonable internal union discipline is to say that an employee-member may simultaneously engage in protected activity and refrain from so engaging. If an employee wishes to be free of internal union discipline, there are no legal barriers against the exercise of such choice. But when an employee voluntarily joins a union (an exercise of his section 7 rights) he may not

join on his own terms, abiding only by those rules with which he is in personal agreement.¹ Similarly, to read the proviso in section 8(b)(1)(A) as limiting a union's internal disciplinary power to expulsion of its members seems to me to be not only an undue restriction of the words "retention of membership" but also an application of the proviso in a way not intended and in a manner which diminishes a power which would exist entirely apart from the proviso. Section 8(b)(1)(A) by its terms is directed at union conduct vis-à-vis employees, not at union conduct vis-à-vis union members.

A true copy.

Teste:

*Clerk of the U.S. Court of Appeals
for the Seventh Circuit.*

¹ In *NLRB v. UAW*, 320 F. 2d 12, 15 (1st Cir. 1963), the First Circuit commented on the effect of union membership on an employee's section 7 right to refrain from concerted activities in the following manner:

"Under Section 7, absent a collective bargaining agreement to the contrary, the employee has indeed the unfettered right to abstain from indulging in union activity. He need not 'form,' 'join' or 'assist' a labor organization and, again, an agreement apart, this inactivity cannot be the source of recriminations. It is by now too clear for citation that this facet of Section 7 was designed to prevent forcing the unwilling worker into a union.

"However, we believe that it is quite another thing when the employee eschews his 'reluctance' and voluntarily joins a labor organization. At this point, under our view, the employee takes off the protective mantle of Section 7's 'refraining' provision and renders himself amenable to the reasonable internal regulations of the organization with which he chooses to cast his lot."

[Certified Copy]

*Opinion by Judge Knoch**(Dissent Opinions by Judges Hastings, Kiley,
Swygert)*United States Court of Appeals, for the Seventh
Circuit, Chicago, Illinois 60604

FRIDAY, MARCH 11, 1966

Before Hon. JOHN S. HASTINGS, Chief Judge, Hon.
F. RYAN DUFFY, Circuit Judge, Hon. ELMER J.
SCHNACKENBERG, Circuit Judge, Hon. WIN G.
KNOCH, Circuit Judge, Hon. LATHAM CASTLE,
Circuit Judge, Hon. ROGER J. KILEY, Circuit Judge,
Hon. LUTHER M. SWYGERT, Circuit Judge

No. 14853

ALLIS-CHALMERS MANUFACTURING COMPANY,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

*Petition for review of an order of the National Labor
Relations Board*

This cause came on to be heard on the petition for review of an order of the National Labor Relations Board entered on October 23, 1964, and the record from the National Labor Relations Board and was argued by counsel before the Court sitting *en banc*, pursuant to an order heretofore entered on October 14, 1965, granting petition for rehearing *en banc*.

On consideration whereof, it is hereby ordered by this Court that the opinion of this Court heretofore issued on September 13, 1965, be, and the same is

hereby withdrawn, and the order entered thereon be, and the same is hereby vacated.

It is further ordered by the Court that the action of the National Labor Relations Board in dismissing the complaints of the petitioner be, and the same is hereby REVERSED, and that this matter be, and it is hereby REMANDED to the National Labor Relations Board for further proceedings not inconsistent with the tenor of the opinion of this Court filed this day.

A true copy.

Teste:

KENNETH J. CARRIDE,

*Clerk of the U.S. Court of Appeals
for the Seventh Circuit.*

APPENDIX B

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 65 Stat. 601, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), in addition to those set forth *supra*, pp. 2-3, are as follows:

SEC. 8. (a) It shall be an unfair labor practice for an employer—

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority

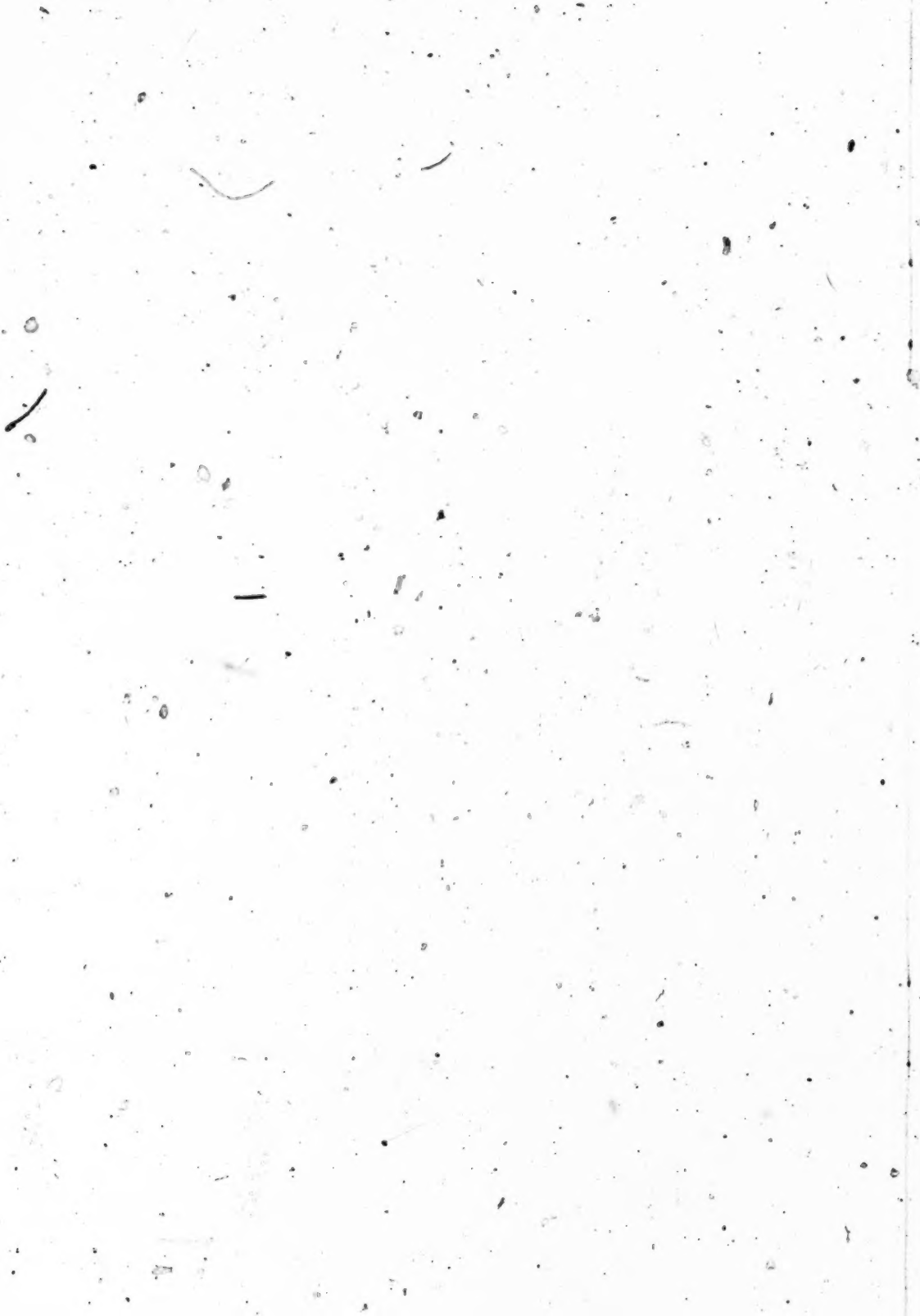
of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required, as a condition of acquiring or retaining membership;

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;



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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1965

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

ALLIS-CHALMERS MANUFACTURING COMPANY AND
INTERNATIONAL UNION, UAW-AFL-CIO
(LOCALS 248 AND 401)

**UNION'S MEMORANDUM JOINING IN PETITION FOR
WRIT OF CERTIORARI BY THE NATIONAL LABOR
RELATIONS BOARD.**

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**UNION'S MEMORANDUM JOINING IN PETITION FOR
WRIT OF CERTIORARI BY THE NATIONAL LABOR
RELATIONS BOARD.**

This proceeding stems from a charge to the National Labor Relations Board by respondent, Allis-Chalmers Manufacturing Company, asserting that the Union has violated the rights of certain of its members by imposing disciplinary fines to compel their adherence to authorized membership strikes for improved working conditions. But membership in the Union by Allis-Chalmers workers is not compulsory. Thus the Company is actually asserting for its employees a statutory right to choose to belong to the Union on their own terms, even to the extent of defying the group decision on the crucial issue whether to invoke a strike in the common interest.

1. The International Union, UAW, is a labor organiza-

tion comprised of constituent local unions and individual members. It is dedicated to a number of objectives (Stip. Exh. 4, Art. 2), the first of which is to "improve working conditions, create a uniform system of shorter hours and higher wages; to maintain and protect the interests of workers under the jurisdiction of this International Union." Allis-Chalmers employees are members of the UAW and its local unions through their own choice and decision. While it is true that the applicable contracts with Allis-Chalmers incorporate "union security" clauses, these do not compel union membership as such but only require an employee to become and remain "a member of the Union to the extent of paying his monthly dues . . ." (Art. IIA of Stip. Exhs. 1A, 19, 27 and 29).¹ Under Sec-

¹ UAW President Walter P. Reuther in a presentation to a Congressional Committee in 1965 has underlined the limited thrust of the UAW's union shop requirement, under which no employee can be required "to participate in any union activity whatever if he does not desire to do so":

" . . . there has been much loose talk about 'compulsory unionism' where the union shop prevails; [but] 'compulsory unionism' is a total misnomer. The fact is that under a Federal court decision of 1951 (*Union Starch and Refining Company v. NLRB*, 186 F.2d 1008), a union shop contract may require all employees to pay dues needed for the operation of the union and its performance of its legal and contractual obligations, but no employee may be forced to join the union and participate in any form of union action if he has conscientious scruples or personal objections thereto. In recognition of this import of the Taft-Hartley Act, the standard UAW union shop contract provides that the employee shall be a member of the union only 'to the extent of paying his monthly dues.' And even beyond this limitation, in recognition of genuine moral scruples in individual cases, there exists a special agreement between the UAW and religious groups . . . permitting their members working at 'union shop' plants to contribute to the support of the union's charitable and welfare services in lieu of paying dues and initiation fees, and recognizing their right to abstain from attendance at meetings and other union activities'.

"In sum, the pre-Taft-Hartley argument about compulsory unionism has proven to be illusory because under the 1947 law no employee in any State of the Union may be required on pain of discipline or discharge to participate in any union activity whatever if he does

tion 8(a)(3) of the NLRA that is the outer limit of permissible union security. See *Marlin Rockwell Corp.* 114 NLRB 553; *Radio Officers' Union v. NLRB*, 347 U.S. 17, 41. "Under the second proviso to § 8(a)(3), the burdens of membership upon which employment may be conditioned are expressly limited to the payment of initiation fees and monthly dues . . . 'Membership' as a condition of employment is whittled down to its financial core." *NLRB v. General Motors Corp.*, 373 U.S. 734, 742. This delimiting of the union security obligation to the payment of dues conforms with the Seventh Circuit's own decision in *Union Starch & Refining Co. v. NLRB*, 186 F.2d 1008, cert. denied 342 U.S. 815.

2. Union solidarity in an economic strike is a matter of intense concern to the International Union and its locals. Numerous provisions of the Union's Constitution (Stip. Exh. 4) control conditions under which strikes may and may not be engaged in by local unions and they require members to "support strike action" when duly undertaken in accordance with the Constitution (Art. 2, Sec. 3). Moreover, the loyalty of the members of the Union to the common interest in such essential matters as a membership strike is required by the oath of membership (Art. 43) and elsewhere in the Constitution (Art. 41, Art. 6). Defiance of the collective determination to engage in or to refrain from a strike is thus a violation of the constitutional obligations of the member to his Union and to his fellow members.

3. Prior to the economic strikes involved in this case, which a few members declined to honor, careful procedures were employed to guarantee membership self-determination. Under the UAW Constitution (Art. 50), there must first be a membership meeting of the local union to deter-

not desire to do so." Hearings before Subcommittee on Labor of the Committee on Education and Labor, House of Representatives, 89th Cong., 1st Sess. (on H.R. 77), Appendix, p. 902.

mine whether a formal strike vote shall be taken. If a strike vote is agreed to by a majority of those present, then "the Local Union Executive Board shall notify all members, and it shall require a two-thirds ($\frac{2}{3}$) vote by secret ballot of those voting to declare a strike." For example, the 1959 Allis-Chalmers strike by Local 248 was preceded by a formal strike vote of the membership on August 13, 1958, held upon individual mailed notice to all members prior to the taking of the vote, and resulting in a two-thirds ratification (see Stip. Exh. 16, pp. 51, 57). Even following that vote, however, the calling of the strike required the prior approval of the International Executive Board, and under the Constitution a strike called without such approval, would have subjected locals and members to the severest forms of union discipline (see Art. 50, Secs. 2, 6 and 7).

4. After their defiance of the membership decision to strike, the dissident members who continued to work were given written charges and formal adversary hearing prior to the imposition of fines for violation of their constitutional obligations to the Union and their fellow members. Following trial a decision was rendered on each case. Thus, one Trial Board made the following pertinent findings (Stip. Exh. 9, p. 3):

"... the accused persons attempted to reverse the action of the membership of Local 248 UAW and the International Union, who believed that in order to gain the objective sought, it was necessary and essential to engage in the strike action ...

"Among the duties of a member of Local 248 UAW and the International Union is to consciously seek to understand and exemplify by practice, the intent and purpose of the obligations of a member and to acquit himself as a loyal and devoted member of the Local and the International Union.

"No greater act of disloyalty to the members on strike, to the local union and the International Union, and to the cause to which they have dedicated themselves can be committed by a member than to cross the picket lines which were established and authorized by his own union. The crossing of the picket lines did, in essence, give aid and comfort to the company at the very time when it was necessary to muster all of the moral and economic powers of the Local and International Union to gain the objectives of the strike."

5. Fines not in excess of \$100 are authorized by the Union Constitution against persons duly charged, tried and found guilty by a Trial Board (Art. 30, Sec. 10). The fines imposed pursuant to the UAW Constitution in these cases were and are collectible through judicial action initiated under the decision of the Wisconsin Supreme Court in *UAW v. Woychick*, 5 Wis. 2d 528, 93 N.W. 2d 336.

6. On these facts the National Labor Relations Board (Member Leedom dissenting) ruled that the Union's conduct did not offend Section 8(b)(1) of the Act forbidding a union "to restrain or coerce employees in the exercise of the rights guaranteed in section 7." Upon Company petition for review to the Seventh Circuit, a unanimous panel opinion (per Judges Kiley, Knoch, and Castle) was issued on September 13, 1965 upholding the Labor Board's decision. For the benefit of the Court, the panel opinion subsequently withdrawn after rehearing before a full bench is set forth in the Appendix, *infra*, at pp. 11-20.

Following full bench rehearing, a new opinion and judgment of the court below was issued on March 11, 1966, reversing the Labor Board's decision as well as the Court's prior decision. Judges Knoch and Castle, who had participated in the original ruling, were joined in a majority opinion by Judges Duffy and Schnackenberg; separate

dissenting opinions were filed by Chief Judge Hastings, Judge Kiley, and Judge Swygert. (See Appendix to the Labor Board's Petition for Certiorari). The majority and dissenting opinions below are clearly divided on a concrete and important federal issue: *is it "coercion" forbidden by the National Labor Relations Act for a union to fine its own members who voluntarily join the union and then violate their union obligation to respect an authorized membership strike for economic gains?*

Additional Reasons for Granting the Writ

The majority opinion in the closely divided Court of Appeals below holds that it is "coercion" forbidden by the National Labor Relations Act for a union to fine its own members who have violated their organizational obligations to their fellow members—in this case by defying and subverting the union's democratically-determined decision on the question of striking to achieve economic benefits. The importance of the federal question thus posed is reviewed in the Board's Petition for Certiorari and requires no emphasis here. Nor need we belabor the manifest clash between the literalistic misapplication of the statute in the opinion below and this Court's ruling in *NLRB v. Drivers (Curtis Bros.)*, 362 U.S. 274, as well as the First Circuit's decision in *NLRB v. UAW*, 320 F.2d 12. We do believe it appropriate, however, to underline the extent to which the Seventh Circuit's decision would extinguish the necessary power of a union as a membership organization to discipline offending members—a right long recognized by the authorities, upheld by judicial rulings, and recently confirmed by the Congress in Section 101(a)(2) and 101(a)(5) of the Labor-Management Reporting and Disclosure Act of 1959:

i. Until the instant case, union authority to fine offending members has historically been accepted and recognized.

Thus, in a comprehensive survey published in 1950 by Professor Clyde Summers—*Disciplinary Procedures of Unions*, 4 Ind. & Lab. Rel. Rev. 15, 26—it was concluded that traditionally:

“The culminating element of union discipline is the infliction of a penalty on the convicted member. The three common types of penalties for offenses are fines, suspension for a limited period, and expulsion . . . [and] the most common form of penalty is the fine.”

Moreover, the power to fine members for *strikebreaking* has been recognized as a particularly indispensable attribute of union solidarity: “the power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent” (Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049), because strikebreaking “undercuts the union’s principal weapon and defeats the economic objective for which the union exists” (Summers, *Disciplinary Powers of Unions*, 3 Ind. & Lab. Rel. Rev. 483, 495). The same is true of unauthorized strikes by union members defying the collective decision to *refrain* from work stoppage. See *Parks v. International Brotherhood of Electrical Workers*, 314 F.2d 886 (CA 4, 1963), cert. den., 372 U.S. 976.² *In construing the Act as preclud-*

² “It is so obvious that a union may punish its members for engaging in an unauthorized strike that the courts have never bothered to discuss the matter. A parent union may even revoke the charter of the local which engages in a wildcat strike and thereby expel all of the members in that local. Disciplining wildcat strikers may not only be a power but a positive duty of the union. Thus, a parent union has suspended a local because it failed to prosecute aggressively individual strikers, and in another case, an arbitrator held that under the special terms of the collective agreement involved, the union had broken its contract by failing to discipline members who had engaged in a stoppage.

“Strikebreakers receive little more protection than wildcat strikers. The union may punish not only those who do the work of men who are on strike, but also those who give the employer any other aid during the strike. Thus, a federal court upheld the expulsion of a member of the Locomotive Engineers who allowed the employer to use his name in suing

ing a union from fining members who work during an authorized strike, the court below necessarily also precludes the fining of members who engage in an unauthorized strike.³

ii. Consistent with the established and accepted union power to fine offending members, no decision prior to this case either under the National Labor Relations Act or the common law has impaired union authority in accordance with constitutional provisions and procedures to fine members for violating their reasonable organizational obligations. Decisions which have confirmed that authority include the prior ruling of the Seventh Circuit in *NLRB v. Amalgamated Local 286*, 222 F. 2d 95; the Fourth Circuit in *Parks v. I.B.E.W.*, 314 F. 2d 886; and the Wisconsin Supreme Court in *UAW v. Woychik*, 5 Wis. 2d 528, 93 N.W. 2d 336. Cf. *Rothstein v. Manuti*, 235 F. Supp. 39, 45-46 (D.C. S.D. N.Y.); *Simpson v. Painters and Glaziers District Council No. 51*, 39 LRRM 2131 (D.C. D.C.); *Rubens v. Weber*, 260 N.Y.S. 701, 237 App. Div. 15; *United States Rubber Co.*, 21 War Lab. Rep. 182.

iii. As recently as the 1959 Landrum-Griffin law, Congress itself reaffirmed the power of union discipline, both in Section 101(a)(5) controlling conditions under which union members may be "*fined, suspended, [or] expelled*," and in

to enjoin the strike. Even though the member felt the strike was unwise, improper, and highly unpatriotic, this conduct, the court pointed out, was viewed by the union to be the equivalent of treason—it was adherence to the enemy in time of struggle, giving him aid and comfort." Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049, 1065-1066 (footnotes omitted).

³ The majority opinion below errs in suggesting that discipline of unauthorized strikers remains unimpaired because a "wildcat" strike is unprotected under the Act. It is true that during the life of a collective bargaining agreement the Act does not protect violation of a "no-strike" clause, but at expiration employees have a right under the NLRA to strike. The ruling below would bar the union from disciplining members who engage in such a wildcat strike.

Section 101(a)(2) disavowing any impairment of the right of a labor organization "to adopt and enforce reasonable rules as to the responsibility of every member toward the organization . . ."⁴ The ruling below holds that the National Labor Relations Act forbids union fines against members violating their obligation of allegiance to a strike for the common interest; thereby it simply reads out of the 1959 statute these express Congressional affirmations of union disciplinary power to preserve solidarity from erosion by dissident members, and it does so by reading implications into the 1947 Act which were never intended by the general injunction of Section 8(b)(1) that unions shall not "restrain or coerce employees" in their exercise of statutory rights.

iv. Finally, there is a significant interplay between the majority opinion below and this Court's recent decision in *American Ship Building Company v. NLRB*, 380 U.S. 300. In *American Ship* the Court held that under the NLRA an employer is free as an economic weapon to lock out his employees—regardless of whether or not they belong to the union or desire to strike—thus in effect forcing a strike and depriving all employees of their "right to work". Yet the ruling of the majority below holds that the Act denies unions a reciprocal power of work stoppage though the interference with "right to work" is limited to the union's *own members* who violate their organizational obligation of adherence to a duly authorized strike. The net effect of this idiosyncratic reading of the National Labor Relations Act is that the *employer* may use

⁴ As Professor Archibald Cox has observed (*Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 834-835): "... dissent in a union, like treason within a nation, must be suppressed if the purpose is to destroy the union, encourage a rival, or bring about the violation of legal or contractual obligations. Section 101(a)(2) contains an exception for these cases".

the historic union bargaining weapon of work stoppage, whereas the *union* is denied the power even to enforce membership solidarity in a concerted strike for economic gains.

Conclusion

The gratuitous impairment of labor union solidarity by the lower court's judicial embroidery on the National Labor Relations Act clearly presents an issue requiring this Court's review. Indeed, the need for an ultimate ruling on that issue is underlined even in the majority opinion below, which recognizes "the national significance of our decision to management and labor alike, as well as to other courts dealing with kindred or related matters . . ."

The Union joins in the request for this Court's review and respectfully submits that the writ should be granted.

Respectfully submitted,

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APPENDIX: Original Opinion in Court Below

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH
CIRCUIT

No. 14853 SEPTEMBER TERM, 1964 APRIL SESSION, 1965

ALLIS-CHALMERS MANUFACTURING COMPANY, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

On Petition for Review of an Order of the National Labor
Relations Board

SEPTEMBER 13, 1965

Before KNOCH, CASTLE and KILEY, *Circuit Judges*.

KILEY, *Circuit Judge*. Allis-Chalmers has petitioned this court to review and set aside the National Labor Relations Board's dismissal of a complaint against two locals of the intervening union, International Union, UAW-AFL-CIO (Locals 248 and 401), bargaining agents for certain Allis-Chalmers employees, charging that the union committed unfair labor practices in fining members for crossing picket lines during a strike called by the union. We deny the petition.

The facts are stipulated. The two locals in question are bargaining agents at the employer's West Allis and La-Crosse, Wisconsin plants. The collective bargaining agreements at both plants contain union security clauses which require that employees join the union within thirty days after hiring and "remain members of the Union to the extent of paying dues." Both locals struck the Allis-Chalmers plants, on economic issues, from February 2 to approximately April 20, 1959, and again between February 26 and approximately March 5, 1962. During each strike some employee-members of the union crossed the picket lines and worked.

Each strike was called in accordance with the procedures prescribed by the constitution of the International union: a majority agreement to hold a formal strike vote, notification to all members of the vote, approval of the strike by at least a two-thirds majority in secret balloting, followed by approval of the International Executive Board. After each strike formal written charges of violations of the International constitution and by-laws were served on the offending members, followed by formal adversary hearings before union Trial Boards resulting in fines ranging from \$20.00 to \$100.00.¹

Some of the members have paid the fines in whole or in part, but others have refused to pay. The union has attempted to collect the fines but has made no effort to have members who refuse to pay them discharged, nor to affect their employment status in any way. No members have been expelled or suspended from the union, nor have any resigned, for any reason arising from the disciplinary proceedings. In a test suit brought against one member who refused to pay a fine, one of the locals recovered a judgment in the County Court of Milwaukee County, Wisconsin, which was affirmed on appeal to the Circuit Court of Milwaukee County, and, this court is informed, is now under advisement by the Wisconsin Supreme Court.

The issue before us is whether a union which imposes fines upon its members for crossing a picket line of the union and seeks to secure payment of the fines by suing or by threat of suit is guilty of violating the prohibition, in Section 8(b)(1)(A) of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C. § 141, *et seq.*, against union action restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act. Underlying the issue is the broader problem of the impact of Section 8(b)(1)(A) of the 1947 Taft-Hartley amendments upon union discipline of members.

¹ One hundred dollars is the maximum fine permissible under the union constitution. Since each crossing of the picket lines was treated as a separate offense, the fines in some cases could have been considerably greater than those actually imposed.

For the purpose of confining the issue we point out that the parties do not dispute that generally employees have the right not to strike; that the union may expel its members for any reason authorized by its rules; and that the union may not demand, nor may an employer accede to the demand, that an employee-member be discharged, prevented from promotion, or have his employment status otherwise adversely affected, except for nonpayment of uniform initiation fees and dues.

The Act in Section 7² guarantees to an employee the right to engage in concerted activities "for the purpose of collective bargaining or other mutual aid or protection" and to refrain from such activities. Section 8(b)(1)(A) of the Act, 61 Stat. 141, 29 U.S.C. § 158(b)(1)(A), provides that

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein

Allis-Chalmers contends that a union member who crosses a picket line of his own union is exercising his Section 7 right to refrain from engaging in a concerted activity and that if the union disciplines the member for engaging in this activity by any means other than expulsion from the union, it violates Section 8(b)(1)(A). This contention rests upon a literal reading of Section 7. But a literal reading fails to take into account the history and

² 61 Stat. 140, 29 U.S.C. § 157.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership as a condition of employment as authorized in section 8(a)(3).

purpose of the Section, which shows that it was not intended to immunize a union member from discipline for defiance of a decision of the majority to strike.

There is no merit in the contention, because Congress did not intend in Section 7 to protect everything which might be described as "concerted activities." As an example, the House Committee Report on H.R. 3020, the House version of the bill, pointed out that the courts and the Board had already held that wildcat and sitdown strikes were not protected activities and that the bill would make no change in those rules;³ and the Conference Report on the House and Senate bills states that Section 7 was limited to "protected activities," even though some unprotected activities may be "concerted" and within the literal meaning of the Section.⁴

Prior to the 1947 Taft-Hartley amendments no federal legislation in any way regulated union internal affairs or activities. Neither the original proposals of the House or Senate specifically prohibited a union from fining its members for "strikebreaking", although the original House versions provided a number of restrictions on unions in their dealings with members.⁵ These provisions do not appear in the bill as enacted.

When Congress was considering the 1947 amendments, it was well aware of union disciplinary measures, including fines, for such activities as "strikebreaking". If Congress had intended to prohibit such fines—while at the same time permitting expulsion as a disciplinary measure—the intention to do so could be expected to be clear. See *International Ass'n of Machinists v. Gonzales*, 356 U.S. 617, 620 (1958). The indications, however, are to the contrary.⁶

³ L.H. 318-19. (References to "L.H." are to the Legislative History of the Labor Management Relations Act, 1947, published by the National Labor Relations Board (1948)).

⁴ L.H. 542-43.

⁵ L.H. 52-58.

⁶ L.H. 1097, 93 Cong. Rec. 4318 (1947) (remarks of Senator Taft):

"The pending measure does not propose any limitation with respect to the internal affairs of unions. They still will be able to fire any members they wish to fire, and they still will be able to try any of their members.

The legislative history of Section 8(b)(1)(A) shows also that the prohibition of that Section, with or without the proviso, was directed against the specific evils of force, violence, and threats thereof, mass picketing, and economic reprisals in the form of inducing an employer to discriminate against an employee in his job rights. It was not intended to have the breadth contended for by Allis-Chalmers and to encompass any activity, including fines collectible by legal process, which may be described as "coercive."

Section 12 of the version of the bill passed by the House defined a number of "unlawful concerted activities" by unions which could be enjoined or be the basis of a suit for damages. This provision was not enacted in the final version which became law. The Conference Committee Report⁷ explains that Section 8(b)(1)(A) was intended to cover the activities specified in Section 12(a)(1)⁸ of the House bill. That Section made no mention of fines as discipline for "strikebreaking."

House Report No. 245 on the House bill as reported by the Committee also made no reference to fines for "strikebreaking" in a listing of results to be achieved by the bill. It states, rather, that "It [the bill] outlaws mass picketing and other forms of violence designed to prevent individuals from entering or leaving a place of employ-

All that they will not be able to do, after the enactment of this bill, is this: If they fire a member for some reason other than nonpayment of dues, they cannot make his employer discharge him from his job and throw him out of work. That is the only result of the provision under discussion."

⁷ L.H. 546.

⁸ L.H. 204.

"Sec. 12 (a) The following activities, when affecting commerce, shall be unlawful concerted activities:

"(1) By the use of force or violence or threats thereof, preventing or attempting to prevent any individual from quitting or continuing in the employment of, or from accepting or refusing employment of, or from accepting or refusing employment by, any employer; or by the use of force, violence, physical obstruction, or threats thereof, preventing or attempting to prevent any individual from freely going from any place and entering upon an employer's premises, or from freely leaving an employer's premises and going to any other place. . . ."

ment." In the same report the Committee said, in explaining Section 8(b)(1):

This is new, making it an unfair labor practice for labor organizations, their officers, agents, and representatives, or for employees, to interfere with, restrain or coerce employees. There is included in this provision a qualification which is not found in the corresponding paragraph covering employers—namely, that the interference proscribed is interference by intimidation.¹⁰

The language of the Section referred to was:

(1) by intimidating practices, to interfere with the exercise by employees of rights guaranteed in Section 7(a) or to compel or seek to compel any individual to become or remain a member of any labor organization.¹¹

The Supreme Court in *NLRB v. Drivers, Chauffeurs, Helpers, Local Union No. 639, Int. Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Curtis Bros.)*, 362 U.S. 274, 286-87 (1960), stated that the Congressional debate shows that the purpose of Section 8(b)(1)(A) is "the elimination of the use of repressive tactics bordering on violence or involving particularized threats of economic reprisal" and that "the note repeatedly sounded is as to the necessity for protecting individual workers from union organizational tactics tinged with violence, duress or reprisal." A fine collectible by legal process hardly comports with the notion of "reprisal" or "intimidation." The "economic reprisal" referred to is such things as securing discharge or reductions in pay or seniority.

The Board also has reached this conclusion with respect to the history of Section 8(b)(1)(A) in holding, in *Local*

⁹ L.H. 297.

¹⁰ L.H. 321.

¹¹ L.H. 178-79. This was § 8(b)(1) of H.R. 3020, as it passed the House.

283, *United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO (Wisconsin Motors Corp.)*, 145 NLRB 1097 (1964), that fines imposed on members and attempted to be collected in State courts for exceeding production quotas do not constitute restraint or coercion within the meaning of that Section. And in *Minneapolis Star and Tribune Co.*, 109 NLRB 727 (1954) the Board held that a \$500 fine for failure to attend union meetings and picket during a strike did not violate Section 8(b)(1)(A). The Board said there that a fine may be coercive but it is not what Congress meant by "coercion."

There are other considerations adding rational support for our conclusion. A union member may express agreement or disagreement with union rules or policies, but he cannot simultaneously be a member and also have whatever advantages there might be in non-membership, and he should not be immunized against discipline if, as a member he acts against a lawful union activity determined by the majority to be in his, as well as their, interest. "The power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent. . . ." Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049 (1951).

A union is a form of industrial government and the rights and duties of a member are similar to those of a citizen in a democratic society. Summers, p. 1074. The nature of this relationship was recognized by Congress in enacting Section 101(a)(2), 73 Stat. 522, 29 U.S.C. § 411 (a)(2), of the LMRDA in 1959. In this section of the "bill of rights" of union members, after providing that members shall have the right to meet together and express their views on matters concerning the organization, Congress added the proviso

That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal and contractual obligations.

Congress would have been inconsistent in adopting this proviso if it had previously, in Section 8(b)(1)(A), forbidden unions to fine members who cross picket lines, for what greater responsibility could a union member have to the union as an institution than to support a lawful strike called by the majority?

Allis-Chalmers' admission of the union's right under the Act to expel members for "strikebreaking" and its challenge of the lesser disciplinary power to fine is inconsistent. If it were true that a union's disciplinary power is limited to expulsion, this would mean that a union would be faced with the dilemma of either permitting anarchy and dissension within its ranks or depleting its strength by expulsion of the offending members. We have not been persuaded by Allis-Chalmers that this absurdity was in the contemplation of Congress.

The employer argues that a fine is not a lesser penalty, but is more coercive than expulsion, since many members would not object to, and might even welcome, expulsion. In many cases, however, expulsion could result in serious financial loss through cancellation of union insurance, pension and other benefits. It would be strange for Congress to prohibit one form of discipline and not the other, where the effect of the one permitted could be equal to, or greater, in severity than the one prohibited.

The employees in this case had the right, under Section 7, to strike or not to strike. But once the union voted to strike, the employees who were union members were bound by the limitation that union membership placed on their right not to strike. It would be difficult to accept the proposition that a union should be the one secular society in our nation which one may enter without being bound by majority rule and without submission to some limitations on rights for the common good. Upon entering, union members must take not only the benefits but the burdens also, *NLRB v. International Union UAW-AFL-CIO*, 320 F.2d 12, 16 (1st Cir. 1963), and these burdens are not solely financial. Implicit in the Section 7 right to organize is the duty, once that right has been exercised, to support

the organization. The point is not that an employee, as such, may not refrain from striking, but that a union member may not with impunity flout the will of the majority (in this case a two-thirds majority) expressed in a strike vote.

If the employer's position that a union may not fine "strikebreakers" is correct, then the converse—that a union may not fine wildcat strikers—would also be true. This would render a union virtually powerless to enforce a no-strike clause on its members. The last portion of the proviso to Section 101(a)(2) of the LMRDA quoted above, however, clearly protects the rights of a union reasonably to discipline members who violate contract clauses. We do not think Congress intended to treat "strikebreakers" differently from wildcat strikers, so far as union discipline is concerned.

We disagree with the employer that this court's decision in *Allen Bradley Co. v. NLRB*, 286 F.2d 442 (7th Cir. 1961), controls our disposition of the issue in this case. There this court held that proposals of the employer to limit the union's right to fine or discipline members refusing to join in a strike were subjects of mandatory bargaining. In dictum the court said that fines for crossing picket lines impose a sanction on the exercise of the right to work guaranteed by the Act and thus do not relate solely to the internal affairs of the union, so that the proviso of Section 8(b)(1)(A) was inapplicable to protect the union. We do not see how, if fining a union member for crossing a picket line is unlawful coercion, as Allis-Chalmers claims here, it can be a matter for collective bargaining. Nor can we see how, if the employer is "concerned" with a union's fining its members for crossing picket lines, so as to give the employer a bargainable interest in the matter—one of the principal bases of the *Allen Bradley* decision—it can be less "concerned" over the expulsion of members, which the employer here concedes is lawful.

The Board's decision in *Local 138, International Union of Operating Engineers, AFL-CIO*, 148 NLRB No. 74, holding it an unfair labor practice for a union to fine a

member for filing an unfair labor practice charge against the union, also does not militate against our position. That case was based on the principle that a union rule which seeks to frustrate the right of members to avail themselves of the services of the Board is contrary to recognized public policies and beyond the competence of a union to enforce by any coercive means.

We conclude that the Board's decision is not erroneous. The petition for review is accordingly denied.

(8196-8)

JUL 8 1966

JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 216

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ALLIS-CHALMERS MANUFACTURING COMPANY AND
INTERNATIONAL UNION, UAW-AFL-CIO (LOCALS
248 AND 401)

**BRIEF OF ALLIS-CHALMERS
MANUFACTURING COMPANY WITH
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**BRIEF OF ALLIS-CHALMERS
MANUFACTURING COMPANY WITH
RESPECT TO PETITION FOR CERTIORARI**

Allis-Chalmers Manufacturing Company (Allis-Chalmers) files this Brief pursuant to Rule 24 in respect to the Petition for Writ of Certiorari filed by the Solicitor General on behalf of the National Labor Relations Board and the Union memorandum joining in

such Petition. Allis-Chalmers, however, submits that in view of (a) the absence of dispute as to the facts which were fully stipulated, (b) the comprehensive discussion of the controlling issues in the decision of the Court of Appeals for the Seventh Circuit sitting *en banc*, (c) the explicit statutory language and its prior application by this Court, and (d) the relevant decisions of other Courts of Appeals, it would be appropriate for this Court to grant certiorari and summarily to affirm the decision of the Court of Appeals for the Seventh Circuit.

Statement of the Case

The essential facts of this controversy can be stated with great simplicity. All the non-probationary employees in the relevant bargaining units of the Company have been members of the union pursuant to union security provisions in the applicable collective bargaining agreements. During economic strikes called by the union, the Company kept its doors open for any bargaining unit employees who elected to refrain from the strike and to work at their regular jobs. The union threatened that crossing the picket line and going to work constituted a violation of the union constitution punishable by a fine up to \$100 and that each day of violation could constitute a separate offense. At the conclusion of each strike the union imposed fines upon members who had worked ranging up to \$100. The union subsequently brought suit to collect the fines in the Wisconsin court as permitted by the existing Wisconsin precedents.

The statement of the case in the petition misstates the extent of the coercion shown here by focusing upon the imposition of fines long after the end of the strikes and ignoring the coercive union threat during the strike of a fine up to \$100 for each day that an employee might

seek to work. The petition then seeks support from the union procedures for calling the strikes and imposing the fines, although the record casts a substantial cloud on the integrity of the strike vote procedures, and the court below properly found no need to review this irrelevant issue in reaching its conclusions.

The decision below is confined to the basic elements of the controversy. It finds a violation of Section 8(b)(1)(A) of the National Labor Relations Act when employees are threatened and fined by a union for crossing a picket line and working during a strike.

The Issue

The issue is whether a union, any more than an employer, may coerce an employee into abandoning a right guaranteed by Section 7 of the National Labor Relations Act.

In this case the right was to refrain from striking. In other recent cases it was the right to produce up to one's ability and the right to invoke the protections of the Act.

In all cases the consequence of the union coercion is the same: the individual employee's freedom to think and to choose for himself is replaced by the compulsion to do what he is told.

The Decision Below

On the critical point of statutory construction, the Court-majority noted:

"The statutes in question present no ambiguities whatsoever, and therefore do not require recourse to legislative history for clarification. The wording used evolved out of extensive Congressional debate and study. Although in our original opinion we re-

jected a literal reading of the statutes, in effect, we conceded that such a literal reading would require reversal of the Board's order." Appendix A to the Petition, p. 7a.

The concepts in the National Labor Relations Board petition demonstrate a painfully involved process of rationalizations in order to justify a particular result. The respondent respectfully suggests that the policy determinations have been made by Congress and that the Court below correctly applied the explicit statutory resolution of the policy questions.

ARGUMENT

There is no need for full review by this Court of the Opinion of the Court of Appeals. The respective positions, philosophies and arguments were exhaustively examined by the Court of Appeals sitting *en banc* and the present petition presents nothing new. The decision reached below is in harmony with the statute, prior decisions of this Court and related decisions and opinions of three other Courts of Appeals. This Court should affirm the decision of the Court of Appeals upon the record and majority opinion below.

Congress prohibited coercion of employees in the exercise of their right to refrain from collective activities. A threat of a union fine of up to \$100 a day simply because an employee chooses to work during a strike is concededly coercive. The decision to work during a strike is clearly the exercise of the right to refrain from a concerted activity.

The petition concedes that the statute protects employee job rights against coercion. Yet it implies that Congress closed the front door against union coercion

of membership subservience by prohibiting threat of job loss but deliberately left the "back door" wide open by permitting threat of a confiscatory fine potentially many times daily earnings.

The petition for certiorari is based upon gross misconceptions as to the philosophy and purpose of our national labor laws. The petition argues from the following basic statement:

"The court below misinterpreted Section 8(b)(1)(A) of the National Labor Relations Act in holding that the invocation of union disciplinary proceedings to penalize conduct unquestionably inimical to the effective functioning of the union in pursuit of its legitimate goals constitutes restraint or coercion within the meaning of that section." Petition, pp. 6-7.

This basic thesis of the petition must fall because it is based upon two untenable assumptions, first that the National Labor Relations Act protects unions in pursuit of their goals rather than employees in pursuit of their goals and second, that the power to coerce member action should have governmental sanction because this would aid effective functioning of a union even to the extent of overriding the express statutory guarantee of rights to employees.

Section 7 of the National Labor Relations Act does not guarantee rights to unions. Rather it guarantees to employees the right either to engage in or refrain from "any or all" concerted activities. Section 8(b)(1)(A), with which we are here concerned, was not enacted to further the "effective functioning of the union in pursuit of its legitimate goals." It was enacted to protect the exercise of statutory rights by employees from restraint and coercion by labor unions. The statute is clear and the court below so found.

The implication in the petition for certiorari that coercive tactics of labor unions against individual members should be sanctioned and encouraged by this Court as an aid to "effective functioning" of a union, strikes at the very heart of our democratic concepts. The recent decisions of this Court in the areas of criminal law enforcement and human rights reject the notion that "effective functioning" of our society is furthered by sacrificing individual rights and freedom of choice.

The Statutory Elements

The statute proscribes restraint and coercion by unions against employees in the exercise of their right to engage in or refrain from concerted activities. That these statutory elements exist here cannot be disputed.

The attempt of the petitioners to minimize the extent of the restraint and coercion is misplaced. It is not just the ultimate \$100 fine which is in dispute. The record is clear that the union threatened the employees that the \$100 fine could be imposed with respect to each crossing of the picket lines. As the court below observed:

"The maximum fine permitted under the union constitution was \$100 with each crossing of the picket lines treated as a separate offense. Consecutive fines may run into thousands of dollars creating a far greater burden on the workingman than expulsion from his labor organization or even loss of job."
(Appendix A to the Petition, p. 3a.)

The purpose of the threats and fines was to prevent employees from exercising their statutory right to work during a strike. The statute rejects the notion of a coercively enforced strike. Each employee is guaranteed the right to refrain from "any or all" concerted activities.

This right is not diminished because the union did or did not have a proper strike vote, did or did not strike in pursuit of a lawful objective or did or did not claim the employees as members.

The claim that the union strike vote procedures properly reflected the will of the members was rebutted by the exhibits to the Stipulation of Facts below. But whatever view is taken of the particular procedures that were followed here, this factor is clearly not a relevant test of the intent of Congress. The statute applies to all unions and all employees. It does not distinguish between unions following one procedure or another or between strikes which are called in one particular manner or another. Rather it assures to employees the free choice whether to work or not to work regardless of what procedures are followed by a union in calling a strike and regardless of what the purpose of the strike may be. The statute recognizes that the only effective means to assure that union action is responsive to the will of all its members, is to guarantee to each employee the free choice whether to join in or refrain from each particular concerted activity.

Nor does an employee surrender the right to refrain from concerted activities when he joins a union. Membership of itself does not mean the surrender of all free choice. The statute gives each employee the right to refrain from "any or all" concerted activities. Under the statute the individual may be a "good, bad or indifferent member." *Radio Officers v. Labor Board*, 347 U.S. 17, 40.

The emphasis of the petitioners upon the supposed voluntary nature of union membership is likewise irrelevant. Whether membership is voluntary or involuntary

the individual joins the union under a statute which protects his right to refrain from any or all concerted activities. By his membership he assumes certain obligations to the union as an organization but these obligations do not extend to surrender of the rights granted and protected by the statute. The membership relationship assumes, and is subordinate to, the statutory rights.

Whatever view may be taken as to voluntary union membership, the issue is not presented on the present record. It is stipulated and the petition admits that the affected employees have been members of the union "pursuant to" union security provisions of the applicable collective bargaining agreements.

It is clear why Congress afforded the individual employee protection against coercion by his labor organization. Under the statute the majority representative bargains for him whether or not he consents. Under the statute and the collective bargaining agreement he is forced to pay dues and initiation fees. In the light of these special statutory privileges and the impact of union membership upon terms of employment, such membership can never be wholly voluntary in the same sense as membership in an organization such as a church or social club.

This Court has defined the scope of Section 8(b)(1)(A). So far as is relevant here the statute was held to be aimed at "particularized threats of economic reprisal." *NLRB v. Drivers, Chauffeurs, Helpers, Local Union No. 639 (Curtis Bros.)* 362 U.S. 274, 287. It is inescapable that this statutory objective encompasses a threat of

a fine of up to \$100 a day simply because an employee works at his regular job to earn a far lesser daily wage.¹

The statute is clear and it may not be distorted by notions of policy contrary to those determined by the Congress. As this Court admonished in *The American Shipbuilding Co. v. NLRB*, 380 U.S. 300, 310:

"... the Act's provisions are not indefinitely elastic, content-free forms to be shaped in whatever manner the board might think best conforms to the proper balance of bargaining power."

Decisions of Other Courts of Appeals

Three other Courts of Appeals have considered the basic question of the legality under the National Labor Relations Act of a union fine imposed upon a member in the exercise of his rights under the Act. These decisions are all in harmony with the decision sought to be reviewed here. No review by this Court is necessary and the principles established by the Courts of Appeals should be confirmed by a summary affirmance of the present decision.

In *Roberts v. NLRB*, 350 F. 2d 427 (1965) the Court of Appeals for the District of Columbia ruled that an unfair labor practice under Section 8(b)(1)(A) had been committed where a union imposed a fine upon a member because that member had previously filed NLRB charges with respect to another matter. This ruling of the court of necessity confirms that a union fine is a coercion within the meaning of the statute, that the

¹ Contrary to the contentions of the petition, the *Curtis Bros.* decision does not limit the broad scope of §8(b)(1)(A). In the final analysis that decision merely holds that §8(b)(1)(A), which protects employees against coercion, covers direct union pressure against employees but does not extend to lawful union pressure, i.e. peaceful picketing, directed against an employer and seeking to compel employer action.

exercise of a statutory right is protected against such coercion, and that membership in a union does not deprive an individual employee of the statutory protection against this form of coercion.

More recently the Court of Appeals for the Third Circuit had occasion to consider this issue in the case of *Leeds & Northrup Company v. NLRB*, 357 F. 2d 527 (1966). Although that decision principally involved procedural questions the court made the following comment with respect to union fines imposed upon employees who refrained from a strike:

"But to equate union fines with total wages earned by a non-striking employee is the grossest form of economic coercion affecting not only the union membership status but also the relationship between the employee and his employer in violation of the Act. Such economic coercion is calculated in design and effect to force an employee to act in concert with the union in future labor-management strife. Congress has imposed strict limitation on compulsory unionism, and the Supreme Court has determined the obligation of union membership to be confined solely to the payment of dues." 357 F. 2d at 536.

This issue was also exhaustively reviewed by the Court of Appeals for the Ninth Circuit in *Associated Home Builders of the Greater East Bay, Inc. v. NLRB*, 352 F. 2d 745 (1965). The issue presented there was the validity of union fines imposed upon employees for alleged violations of a union-imposed rule limiting individual productive output. While the court ultimately left the Section 8(b)(1)(A) issue unresolved in favor of a different approach to the problem, its extensive review and analysis of the Section 8(b)(1)(A) problem is consistent with the approach adopted by the Court of Appeals for the Seventh Circuit in the instant case.

The foregoing decisions of the Courts of Appeals stand in harmony with each other, with the statute, and with the relevant decisions of this Court. The present petition presents an appropriate vehicle for a summary affirmance of the views expressed in the majority opinion below. This case had the fullest possible consideration by the Court of Appeals *en banc* and the summary affirmance of the decision is warranted.

Subsidiary Issues

The respective petitions of the Solicitor General and the union attempt to reargue matters of policy and legislative history which were fully considered below. No purpose will be served by again answering each of these contentions. The opinion of the Court of Appeals is a complete statement of why these arguments must be rejected. However, certain points deserve comment.

The petition quotes certain limited statements from the legislative debate. The quotation from Senator Taft at page 9 of the petition was found inapplicable by the Court below. Appendix A to Petition, p. 5a.

Other statements by Senator Taft explicitly support the decision below. In particular, in his analysis of the conference agreement on the Act, Senator Taft revealed that the express language in Section 7 as to the right of employees to refrain from concerted activities was added to the Senate bill because:

"The House conferees insisted that there be express language in Section 7 which would make the prohibition contained in Section 8(b)(1) apply to coercive acts of unions against employees who did not wish to join or did not care to participate in a strike or a picket line." Legislative History of the Labor Management Relations Act, 1947, p. 1623.

The petition quotes from Senator Ball with respect to the thrust of Section 8(b)(1)(A) against improper organizational activities. While this was one purpose of the enactment it certainly was not the sole purpose and employees who became union members did not thereby forfeit their statutory protection.¹ In fact during the Senate debate Senator Pepper complained that Section 8(b)(1)(A) was "an effort to protect the workers against their own leaders, chosen by them under their own constitution and by-laws." This interpretation was not disclaimed by the sponsors of the amendment. Rather Senator Taft stated:

"If there is anything clear in the development of labor union history in the past ten years, it is that more and more labor union employees have come to be subject to the orders of labor union leaders. The bill provides for the right of protest against arbitrary powers which have been exercised by some of the labor union leaders. Certainly it seems to me that if we are willing to accept the principle that employees are entitled to the same protection against labor union leaders as against employers, then I can see no reasonable objection to the amendment proposed by the Senator from Minnesota [Section 8(b)(1)(A)]." Legislative History of the Labor Management Relations Act, p. 1028, 1030.

The reliance of the petition upon the subsequent enactment of the Labor Management Reporting and Disclosure Act (LMRDA) is misplaced. This Act was intended to give union members greater rights and privileges in their dealings with their labor unions and was certainly not intended to restrict those rights. No re-

¹The Board's own decision in the closely related case of Local 138, Operating Engineers (Charles S. Skura) 148 N.L.R.B. 679 (1964) confirms that §8(b)(1)(A) protects union members against coercive fines for exercising rights under the Act.

course to legislative history is required to determine this intent since Section 103 of the LMRDA specifies:

"Nothing contained in this title shall limit the rights and remedies of any member of a labor organization under any state or federal law or before any court or other tribunal, or under the constitution and by-laws of any labor organization."

In the hearings of LMRDA, in the debates and in the terms of the statute, Congress expressed its concern for the protection of the rights of the individual in relation to his organized union leadership. While Congress left room for enforcement of reasonable union rules, it is specious to contend that a union rule could be deemed "reasonable" in the contemplation of Congress when its enforcement nullifies a right guaranteed by Congress.

Although the proviso to Section 8(b)(1)(A) allows a union the power to expel its members, there is no inconsistency in concluding that Congress intended to permit this power while restricting the power to fine or otherwise coerce employees. Congress may have believed that a union required protection against dissident members boring from within. Congress may have believed that no organization should be required to extend the privileges of membership to anyone who is not in sympathy with its policies. But such Congressional purposes imply no support for union fines. A fine is a pure coercion designed not to protect the union but to control the employee.

The petition finds it "anomalous" for Congress to permit expulsions while excluding fines. Such a view ignores the practicalities. The coercive force of the power to fine as compared with expulsion was dramatically admitted by the argument of counsel for the union here that

"a sanction such as, 'you are no longer a member of this union,' means nothing and is of no consequence and probably could well be a relief to some people" and the union control of the conduct of its members "can only be enforced" through the methods used here. (See the Transcript pp. 22-23, quoted in the Brief of Allis-Chalmers Manufacturing Company to the Court of Appeals, pp. 44-45.) When faced with possible expulsion the employee can freely choose whether he values his union membership more than he values his right to work, but when faced with enforceable threats of financial sanctions far greater than his total earnings if he exercises his right to work, all reasonable freedom of choice is foreclosed and he is compelled to bend to the union dictate.¹

The case of *NLRB v. UAW*, 320 F. 2d 12 has no relevance here. The court there was dealing with a question of union procedural rules governing resignation from union membership. This matter was clearly within the scope of the proviso to Section 8(b) (1) (A) and thus there is no inconsistency whatever between that decision and the decision here.

The petition of the union professes a concern for the effect of the decision upon union power to discipline and control wildcat strikers. Suffice it to say that this issue is not involved in the present case. Protection of the right to refrain from striking does not of itself establish a similar protection for wildcat strikers. Section 7 was not so intended. Cf. *NLRB v. Sunbeam Lighting Company, Inc.* (7th Cir., 1963) 318 F. 2d 661.

¹The petition speculates on the possible loss of union benefits which could flow from expulsion. The record is wholly silent on this subject. Such speculation furnishes no basis for interpreting a statute applicable to all labor organizations, many of which may provide no such benefits.

Conclusion

An employee may wish to exercise his statutory right to refrain from a strike for a variety of perfectly good reasons ranging from distrust that the union leadership was advancing not employee interests but rather personal political motivations or even subversive interests, to mishandling of the strike vote procedures, or simply the belief that the strike had no economic justification or would cause too great a personal loss. Whatever the reason, Congress protected the individual employee's freedom of choice and prohibited coercive financial sanctions by unions to force an employee to strike.

Congress was concerned with the individual employee. The statutory protection is clear. The various Courts of Appeals have resolved the issue in favor of protection of the individual in the exercise of his statutory rights. The decision below was exhaustively reviewed by the Court of Appeals *en banc* and is worthy of summary affirmance.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

ALLIS-CHALMERS MANUFACTURING COMPANY
and INTERNATIONAL UNION, UAW-AFL-CIO
(Locals 248 and 401), *Respondents.*

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNION

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 216

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

v.

ALLIS-CHALMERS MANUFACTURING COMPANY
and INTERNATIONAL UNION, UAW-AFL-CIO
(Locals 248 and 401), *Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNION

Opinions Below

The initial opinion of the Court of Appeals for the Seventh Circuit was issued on September 13, 1965, and appears in the Record at pp. 84 to 93. The majority and dissenting opinions in the Court of Appeals for the Seventh Circuit on rehearing *en banc*, issued on March 11, 1966, are reported at 358 F. 2d 656 and appear in the Record at pp. 96 to 123.

Jurisdiction

The opinions and judgment of the Court of Appeals for the Seventh Circuit were entered on March 11, 1966. The petition for writ of certiorari was filed on June 9, 1966, and certiorari was granted on October 10, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1) and Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. 160(e)).

Question Presented

Whether a union which fines a member-employee for crossing the union's picket line established in support of a lawful strike authorized by a majority of the union's membership and attempts to collect such fine by court action, thereby restrains or coerces the member-employee in violation of Section 8(b)(1)(A) of the National Labor Relations Act.

Statute Involved

Section 7 of the National Labor Relations Act (61 Stat. 136, 29 U.S.C. 151, *et seq.*) provides:

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations * * * and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Section 8(b)(1)(A) of the National Labor Relations Act provides:

Sec. 8(b). It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

Statement

This Court has granted review of the unprecedented ruling by the Seventh Circuit that the National Labor Relations Act prohibits labor unions from fining their members for violation of their basic organizational obligations. Because the majority opinion below omits many pertinent facts and is incorrect about others, we set forth herein the full sequence of events from which arises the issue before this Court for resolution.

1. The present case involves the disciplining of certain members of two Wisconsin locals of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, who violated their organizational obligations by continuing to work during duly authorized strikes for improved employment conditions. The membership of Local 248 of the Union is comprised of employees of the Allis-Chalmers Company at its West Allis works, and Local 401 members are employed at the Company's LaCrosse facility.

2. Allis-Chalmers employees who belong to the UAW are members by their own choice. The applicable contracts between the Union and Allis-Chalmers do not require employees to join the Union; they require only that an employee become and remain a member of the Union "to the extent of paying his monthly dues" (R. 34). Before becoming UAW members, Allis-Chalmers employees were required like all others to apply for membership in the appropriate local union under Article 6, Section 2, of the

UAW Constitution (R. 35),¹ and this the employees herein concerned did do (see R. 60). Following such application, every accepted employee was sworn into the Union (R. 58-61). Pursuant to Article 43 of the UAW Constitution, he pledged to honor his obligations to the Union Constitution and its rules and regulations and to bear faithful allegiance to the organization (R. 38).² Only upon thus accepting the duties of allegiance does an employee become a member of the Union (R. 38). Pursuant to this procedure, the oath of membership was duly administered to all new Allis-Chalmers members prior to their enrollment in the Union (R. 58-61). Members subsequently desiring to withdraw could resign or terminate membership pursuant to Article 6, Section 16, of the UAW Constitution (Stip. Exh. No. 4) within a 10-day period prior to the end of any year. Although such withdrawal would have had no effect upon their employment status, the UAW members herein involved did not invoke this privilege at any time before they were disciplined for violating their obligation of allegiance to the organization and their fellow members; nor have any of them subsequently sought to resign from the Union (R. 30, 97).

3. Solidarity in an economic strike is a matter of intense concern to the UAW and its locals, as it is to all unions. Numerous provisions of the UAW Constitution (see R. 38-41) control conditions under which strikes may and may not be engaged in by locals, and require membership ad-

¹ The 1959 UAW Constitution was attached as Exhibit No. 4 to the Stipulation of Facts (hereafter "Stip") upon which this case was presented to the Labor Board, and it is before this Court.

² "I, _____, pledge my honor to faithfully observe the Constitution and laws of this Union . . . ; to comply with all the rules and regulations for the government thereof; not to divulge or make known any private proceedings of this Union; to faithfully perform all the duties assigned to me to the best of my ability and skill; to so conduct myself at all times as not to bring reproach upon my Union, and at all times to bear true and faithful allegiance to the International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)."

herence to the common interest (see Art. 41 and Art. 6). In addition, Article 2, Section 3, requires each member to "support strike action" duly undertaken in accordance with the Constitution (R. 35), and the allegiance which he pledges in his oath of membership (R. 38) secures his acceptance of this fundamental obligation. Defiance of the collective determination to engage in or to refrain from a strike is thus a violation of the Constitutional obligation of the UAW member to his Union and his fellow members.

4. The Allis-Chalmers strikes leading to the disciplinary fines here in issue were called in 1959 and 1962 in conformity with all of the requirements of the UAW Constitution. Under Article 50 (R. 38-41) there must first be a membership meeting of the local to determine whether a formal strike vote shall be taken. If a strike vote is agreed to by a majority of those present, then (R. 38) "the Local Union Executive Board shall notify all members, and it shall require a two-thirds ($\frac{2}{3}$) vote by secret ballot of those voting to declare a strike." The 1959 Allis-Chalmers strike by Local 248 was preceded by a formal strike vote of the membership on August 13, 1958, held upon individual notices mailed to all members prior to the taking of the vote, and resulting in a two-thirds strike approval (see R. 97; Stip. Exh. No. 16, pp. 51, 57). Even following that vote, however, the calling of the strike required the prior approval of the International Executive Board, and under the UAW Constitution (Art. 50, Secs. 2, 4, 6, 7) a strike called without such approval could have subjected locals and members to the severest forms of union discipline (R. 39-40). International Union approval was obtained (R. 97), and thereafter, on February 2, 1959, Local 248 commenced an economic strike at West Allis which continued until April 20, 1959. Of the 7,400 members of the striking local, 175 members worked on one or more days during this strike (R. 27). A second economic strike in 1962, similarly

approved, was commenced by both local unions on February 26, 1962, and ended on March 4th. Thirty-four union members, out of a total force of 6,125, worked on one or more days during this strike (R. 29, 32).

5. In due course after each of the Allis-Chalmers strikes, charges were filed and disciplinary proceedings were had against the few UAW members who had violated the Union's rules by working during the strikes. Such proceedings were conducted in conformity with the provisions of Article 30 of the UAW Constitution governing trial of members (R. 31). Those provisions specify (see R. 36-37; Stip. Exh. No. 4) that charges against members must be written and signed by other members, submitted in timely fashion, and served by registered mail upon the accused. They provide rights of speedy trial and representation by counsel before a Trial Committee selected by lot from the general membership. The Trial Committee must submit its written findings within 60 days; a finding of guilty requires a two-thirds vote of the Trial Committee and penalties may include a fine "*not to exceed one hundred dollars*", but again only upon a two-thirds vote (R. 37). A verdict of guilty and any penalty imposed by the Trial Committee become effective only if approved by a majority of the members voting, by secret ballot, at a membership meeting (R. 37). Full rights of appeal to higher bodies within the Union are preserved to the accused member by Articles 31 and 32 of the UAW Constitution; he has the right of review before the International Executive Board and thereafter by the Constitutional Convention or by the Union's impartial Public Review Board. The 200 members of the Allis-Chalmers locals who worked during the 1959 or 1962 strike were duly tried in conformity with these provisions of the UAW Constitution and upon findings of guilty were fined in various amounts not exceeding \$100 (R. 30-32, 43-54).

6. The basis upon which the various Trial Committees

found the members' conduct to have violated their organizational obligations is illustrated by the following extract from one committee's report (R. 47-48):

"... the accused persons attempted to reverse the action of the membership of Local 248 UAW and the International Union, who believed that in order to gain the objectives sought, it was necessary and essential to engage in the strike action. . . .

"Among the duties of a member of Local 248 UAW and the International Union is to consciously seek to understand and exemplify by practice, the intent and purpose of the obligations of a member and to acquit himself as a loyal and devoted member of the Local and the International Union.

"No greater act of disloyalty to the members on strike, to the local union and the International Union, and to the cause to which they have dedicated themselves can be committed by a member than to cross the picket lines which were established and authorized by his own union. The crossing of the picket lines did, in essence, give aid and comfort to the company at the very time when it was necessary to muster all of the moral and economic powers of the Local and International Union to gain the objectives of the strike."

7. Some of the Union members who were disciplined voluntarily paid their fines. The Union instituted legal actions in the courts of Wisconsin against ninety-seven who declined to pay. In suing for collection of the fines imposed, the Union relied upon a leading Wisconsin decision upholding judicial enforcement of union fines—*UAW v. Woychik*, 5 Wis. 2d 528, 93 N.W. 2d 336 (1958). The suit against one UAW member—Benjamin Natzke—to collect the fine imposed upon him for working during the 1950 Illinois Chalmers strike proceeded to trial in the County Court of

Milwaukee County (see R. 55-76). The opinion of that Court granting judgment for the Union (Stip. Exh. No. 17) was issued on April 26, 1963, and was affirmed by the Circuit Court for Milwaukee County on March 3, 1964; the case is now pending before the Supreme Court of Wisconsin. In upholding and enforcing the Union's assessment of the fine upon member Natzke, the Wisconsin court made the following pertinent finding (Stip. Exh. No. 17, pp. 5-6):

"Whether or not . . . the defendant could have been compelled to do more than just pay dues and initiation fees need not be determined by the Court in this case. The Court finds that the defendant did in fact do more than this. From the record the Court is satisfied that the defendant was present at the initiation ceremony and with others did take the oath of membership. He did attend the vote at the meeting of August 13, 1958 and he attended the meeting of February 2, 1959. He had by his actions become a member of the Union for all purposes and as such member was subject to all reasonable and non-discriminatory terms and conditions of membership. Under the facts in this case he did become a 'full' member of the Union. Having taken advantage of the prerogatives of Union membership he has assumed all of the duties of membership.

"When a person becomes a member of a labor organization he engages to be bound by its rules. The members of an organization may properly prescribe rules which are non-discriminatory and provide for penalties for violation."

8. Following imposition of fines upon UAW members who worked during the Allis-Chalmers strikes and institu-

tion of the suits for collection, the *Company* filed a charge with the National Labor Relations Board alleging that the Union fines violated Section 8(b)(1) of the Act. After issuance of a Board Complaint and submission of the case upon stipulated facts, the Trial Examiner ruled on January 31, 1964, that the Union had not violated the Act. He found (R. 10) that Section 8(b)(1) of the Act does not come into play when union discipline arises from "infraction of an internal union rule" and the union has made no "attempt to bring about a termination of an employment relationship" as the means of discipline. His holding was based on the ground (R. 9) that "internal union disciplines were not among the restraints intended to be encompassed" by the "restrain or coerce" prohibition of Section 8(b)(1), and that in any event the proviso to that Section clearly leaves union discipline outside the ambit of NLRA restriction.

9. On October 23, 1964, the Labor Board issued its opinion (Member Jenkins concurring and Member Leedom dissenting) finding that no violation of Section 8(b)(1) arises from a union's fining of its members who work during a duly authorized strike (R. 13-18). In so doing, the Board stated (R. 16) that "under certain circumstances" imposition of union fines may violate Section 8(b)(1), but it emphasized that no violation occurs when the norm enforced by union discipline is within "*the competence of the union to enforce.*" Concerning this particular case the Board emphasized that (R. 16-17):

"We cannot conceive of a subject which would be more within its competence, since it involves the loyalty of its members during a time of crisis for the union. The Act does not deprive a union of all recourse against those of its own members who undermine a strike in which it is engaged. When the strike is lawful and the picket line is lawful, we cannot hold

that a union must take no steps to preserve its own integrity."

10. The Allis-Chalmers Company petitioned for review in the Court of Appeals for the Seventh Circuit. On September 13, 1965, Judge Kiley delivered the Court's opinion, for himself and Judges Knoch and Castle, upholding the Labor Board's ruling (R. 84). On the basis of a careful analysis of the legislative history of Section 8(b)(1), the Court found that membership discipline by labor unions was not made a subject of Congressional restriction in the National Labor Relations Act. The several predicates of the Court's 1965 panel opinion are aptly summarized in the subsequent majority opinion of the Court on rehearing *en banc* (R. 100-101):

"In formulating our original opinion, we gave favorable consideration to the following arguments:

1. A member ought not to enjoy all the benefits of union membership while relinquishing none of the advantages of non-union membership.

2. Congress would have been guilty of inconsistency in adopting 29 U.S.C.A. 411(a)(2) which allows unions to enforce reasonable rules as to the responsibility of members with respect to refraining from conduct that interfered with the union's legal and contractual obligations, if Congress were also prohibiting imposition of fines for members who crossed picket lines.

3. If a union's disciplinary powers are limited to expulsion, a union must choose between permitting anarchy in its ranks or depleting its strength, and Congress could not have intended to present unions with so invidious a choice.

4. A fine may be a lesser penalty than expulsion with attendant loss of union insurance and other benefits, and Congress would not have allowed the more severe

while withholding the less serious form of punishment.

5. If a union may not fine strikebreakers, then it cannot fine wildcat strikers and cannot enforce a 'no strike' clause in its contract.

6. An analogy was drawn between an industrial union and a democratic society where the majority vote rules. . . ."

11. Despite these considerations supporting the unanimous panel decision in favor of the Board and the Union, a Company petition for rehearing *en banc* was granted (R. 95). On March 11, 1966, a four-to-three decision of the Seventh Circuit reversed the earlier panel ruling (R. 96). Judges Knoch and Castle who had joined the panel decision changed their views and were joined in a majority opinion by Judges Duffy and Schnackenberg. Separate dissenting opinions were filed by Chief Judge Hastings, Judge Kiley and Judge Swygert (R. 104-123). The majority opinion appears to rest upon three propositions summarized in the dissent by Judge Swygert: "The relevant points cited by the majority in support of its conclusion, and with which I disagree, are: (1) this case involves employees who are involuntary members of the union; (2) the possibility exists that the union might exact crippling and unreasonable fines; and (3) there is no occasion for resorting to legislative history in the application of Sections 7 and 8(b)(1)(A) of the National Labor Relations Act to the facts of this case" (R. 121).

Before presenting our Argument to this Court we pause to correct two factual errors made by the majority below, which evoked vigorous protest from the dissenting judges (as, for example, Judge Swygert's dissent just quoted). These relate to the majority's suggestion (R. 102) that some Allis-Chalmers employees "may have been forced

into membership" by the Company-UAW union security clause and the assertion (R. 98) that, under the Union Constitution individual members might have been fined "thousands of dollars" on a successive-day basis for working during the Allis-Chalmers strikes.

The suggestion that Allis-Chalmers employees were somehow forced into membership in the Union is entirely unfounded. As the dissenting opinion by Judge Kiley emphasizes (R. 118-119), even the Company never made so extravagant a contention and he correctly concludes that "the question of involuntariness was not and is not in the case." The majority's intimation of involuntariness is belied by the incontrovertible fact that the maximum union security permitted by the collective bargaining contract between the UAW and Allis-Chalmers is that an employee become and remain a member of the Union "to the extent of paying his monthly dues. . . ." (R. 34).³ Indeed, under Sec-

³ UAW President Walter P. Reuther in a presentation to a Congressional committee in 1965 underlined the limited thrust of the UAW's union shop requirement, under which no employee can be required "to participate in any union activity whatever if he does not desire to do so." Mr. Reuther stated: ". . . there has been much loose talk about 'compulsory unionism' where the union shop prevails; [but] 'compulsory unionism' is a total misnomer. The fact is that under a Federal court decision of 1951 (*Union Starch and Refining Company v. NLRB*, 186 F. 2d 1008), a union shop contract may require all employees to pay dues needed for the operation of the union and its performance of its legal and contractual obligations, but no employee may be forced to join the union and participate in any form of union action if he has conscientious scruples or personal objections thereto. In recognition of this import of the Taft-Hartley Act, the standard UAW union shop contract provides that the employee shall be a member of the union only 'to the extent of paying his monthly dues.' And even beyond this limitation, in recognition of genuine moral scruples in individual cases, there exists a special agreement between the UAW and religious groups . . . permitting their members working at 'union shop' plants to contribute to the support of the union's charitable and welfare services in lieu of paying dues and initiation fees, and recognizing their right to abstain from 'attendance at meetings and other union activities.'

"In sum, the pre-Taft-Hartley argument about compulsory unionism has proven to be illusory because under the 1947 law no employee in any State of the Union may be required on pain of discipline or discharge to par-

tion 8(a)(3) this is the outer limit of the union adherence which may be compelled by employment sanctions. That was the conclusion of this Court in *NLRB v. General Motors Corp.*, 373 U.S. 734. See also *Radio Officers v. NLRB*, 347 U.S. 17, 41; *Union Starch & Refining Co. v. NLRB*, 186 F. 2d 1008 (C.A. 7), *cert. den.* 342 U.S. 815. Here the employees involved went beyond the compulsion permitted by Section 8(a)(3) under these authoritative decisions; they applied for union membership and took the oath as regular members of the Union. The Wisconsin trial court expressly so concluded in enforcing the payment of the union fine in the test case arising out of the Allis-Chalmers strikes (see *supra*, p. 8). Thus, there is no basis whatever for the conjecture by the majority below that the union members fined for violating their UAW obligations may have been forced into membership by a union security agreement.

Equally erroneous is the recital in the majority opinion (R. 98) that the maximum fine permitted under the UAW Constitution is \$100 "with each crossing of the picket lines treated as a separate offense. Consecutive fines may run into thousands of dollars . . ." The instant case came to the Labor Board and then to the Court of Appeals on a stipulation of facts which shows that no UAW fines imposed exceeded \$100, and which nowhere supports the "repetitive fine" reading of the \$100 limitation indulged by the majority below. True, one of the local unions herein, in warning the picket-line crossers against further violation, stated that "each day of violation may well constitute a separate offense." But no repetitive fines were thereafter imposed for consecutive days of violation. The case hypothesized by the court below is thus simply not this case as it

ticipate in any union activity whatever if he does not desire to do so." Hearings on H.R. 77 before a Special Subcommittee of the House Committee on Education and Labor, 89th Cong., 1st Sess., Appendix, p. 902 (1965).

was presented on stipulated facts by the parties. But if one were to go beyond the record into the conjectural area entered by the court below, the fact is that the International Union construes its Constitution's \$100 limitation as precluding the treating of each day of work during a strike as a separate violation. A search of its records at counsel's request reveals no single instance wherein a local union has ever imposed a consecutive fine. If a trial board were to impose such a fine, one of the reviewing bodies within the Union hierarchy itself would order it remitted to the \$100 level, in order to comport with the UAW Constitution.

In any event, the present case simply does not pose a question of consecutive fines which "may run into thousands of dollars." Counsel for the Union suggested to the Board's Trial Examiner (Hearing of June 11, 1963, Tr. pp. 25-27), that an unreasonable fine (such as one equivalent to annual earnings) would violate due process prohibitions; and he pointed out that there "are no such facts in this case" since the UAW Constitution "prohibits the fining of an individual more than \$100." The question for review is whether the fines not exceeding \$100 actually imposed upon UAW members who violated their Union allegiance obligations are forbidden by Section 8(b)(1) of the Act. That is the question to which we direct our Argument to this Court.

Summary of Argument

The National Labor Relations Board, in its opinion and in its brief before this Court, demonstrates from the text and the legislative history that Section 8(b)(1) does not restrict labor union discipline over members who violate organizational obligations by such conduct as defiance of a membership-approved economic strike. The Union's brief, rather than repeating the voluminous legislative evidence reviewed in the Board's brief, emphasizes four additional considerations which buttress the Board's reading of the

statute and underline the proposition that union discipline of members remains unaffected by the National Labor Relations Act.

A. *Disciplinary fines were imposed only on Allis-Chalmers employees who had elected to join the Union and to accept the duty of allegiance long recognized as necessary to effective unionism.* The fined UAW members chose to join the Union, thereby deriving major privileges and subjecting themselves to corresponding obligations; having chosen to join and having remained as members, they were not a law unto themselves and had no right to defy the common decision of the membership to engage in a strike for better contract terms.

Section 8(a)(3) of the National Labor Relations Act permits no more compulsion in union security arrangements enforceable by employer discipline than the payment of periodic dues. As this Court ruled in *NLRB v. General Motors Corp.*, 373 U.S. 734, 742, under that provision " 'Membership' as a condition of employment is whittled down to its financial core." Since in Section 8(a)(3) Congress limited union security to the payment of dues and thus preserved the freedom of employees from compulsory unionism, it becomes an idiosyncratic and perverse construction to read Section 8(b)(1)—enacted concurrently with 8(a)(3)—as prohibiting discipline of members who choose unionism and then violate their sworn obligation of allegiance. Union obligations undertaken by an employee have long been recognized as binding upon him after he has accepted membership. See *Elgin, Joliet v. Burley*, 325 U.S. 711, 327 U.S. 661; *NLRB v. UAW*, 320 F.2d 12. Once Congress forbade compulsory membership, the presumption is clear that it left undisturbed the established principle that unions, like a myriad of other voluntary associations, may define and secure the duties of those who choose to be members.

B. Adherence to a membership strike for improved working conditions is a time-honored first duty of unionism. Indeed, among all the recognized obligations of union membership, the clearest is the obligation to respect the collective strike—the most important weapon of trade unionism.

In view of the central significance of the strike to the existence of the union and the perpetuation of its members' interests, it has long been recognized that unions may properly discipline members who defy an authorized strike. And no less necessary to union control of the valued strike weapon is union power to discipline wildcat strikers—a power which the statutory construction by the court below would equally impair. In construing the Act as precluding a union from fining members who work during an authorized strike, the court below also precludes the fining of members who engage in an unauthorized wildcat strike. Cf. *Parks v. IBEW*, 314 F. 2d 886, 905-906, *cert. den.* 372 U.S. 976.

Congressional recognition and protection—in Norris-LaGuardia in 1932; in Wagner in 1935, and in Taft-Hartley in 1947—of the strike as labor's indispensable weapon, reflects the prevalent understanding derived from our national labor relations experience. Moreover, in 1947 there was Congressional recognition of necessary union disciplinary power during the Senate debates on an amendment which would have limited such power in connection with strikes. And the necessity of union disciplinary power to assure continuing allegiance by the membership has even more recently been Congressionally confirmed. In the 1959 Landrum-Griffin Act (Section 101(a)(2) and (a)(5)) union authority to require and enforce by discipline the members' allegiance to the common cause was expressly secured by the Congress. Every indication given by Congress both in 1947 and 1959 was to leave unimpaired traditional union

disciplinary power to assure membership solidarity during authorized strikes and the ability to prevent unauthorized strikes.

C. *Reasonable fines collectible by legal action offend no Congressional norm and are frequently less rigorous than summary expulsion from union membership.* This is the simple answer to the Company's argument, which the lower court appears to have accepted, that the Union violated Section 8(b)(1) by choosing as the means of discipline the imposition of judicially-collectible monetary fines rather than suspension or expulsion. Indeed, no decision prior to this case either under the National Labor Relations Act or the common law has denied union authority to fine members who violate their organizational obligations. Rather, that authority has been frequently confirmed since an historic New York case decided in 1867 (see *infra*, pp. 38 to 40).

The Company and the court below appear to be arguing that judicially-collectible union fines are inherently coercive. But rather than *coercion*, judicial processes are *remedies* to secure the observance of contractual agreements and other binding rules of conduct. Actually, upon comparing the relative compulsions and rigors of reasonable judicially-collectible fines on the one hand and summary expulsion from a union on the other, it seems evident that the former are often the less severe: Expulsion is a terminal act of self-help by the union which may have the most serious unfavorable consequences upon the individual affected; suit for collection of a disciplinary fine evokes the judicial process which centuries of experience approve as the best means for protecting the rights of contending parties. Congress nowhere having disparaged union disciplinary fines, judicial engrafting of their prohibition upon the statute would arrogate the legislative function.

D. *The statute's purpose to promote effective collective bargaining precludes the view that Section 7 safeguards a union member's right to defy the common cause as determined by majority rule.* Thus, even if all of the 8(b)(1) considerations and arguments we advance were somehow to be rejected by this Court, there would still remain a serious question whether under Section 7 itself Congress has secured a right of employees who have joined a union to defy and subvert authorized union action.

Competing rights under Section 7 are often in a state of "tension" (*NLRB v. Drivers*, 362 U.S. 274, 280), and the right to strike as well as the right not to strike may fall before other protected values secured by the NLRA. See, e.g., *NLRB v. Sands Mfg. Co.*, 306 U.S. 332; *NLRB v. Rockaway News Supply Co.*, 345 U.S. 71; *American Ship Building Co. v. NLRB*, 380 U.S. 300, 310. The dissident conduct of the union members fined herein was not an assertion by them of a Section 7 statutory right to refrain from forming, joining and assisting unions—a right they had renounced by joining the UAW; rather, it was a violation of the right of the *striking* unionists to engage in a Section 7 activity without subversion by their fellow members.

Majority rule is the necessary foundation of employees' bargaining rights under the federal labor law. See *Ford Motor Co. v. Huffman*, 345 U.S. 330; *J. I. Case Co. v. NLRB*, 321 U.S. 332, 339. In a strike for improved bargaining terms that rule clearly binds the union's own members. Those unwilling to abide by the majority rule system in the union have the alternative to forego union membership. What they cannot do is simultaneously to claim union membership and a statutory right to abstain from union allegiance.

Argument

The National Labor Relations Board, after careful review of the text and legislative history of Section 8(b)(1) of the Act (see R. 15), ruled that no violation of that provision inheres in labor union discipline of members for violating their duty of organizational allegiance. The majority opinion below declines the legislative evidence and applies its own view of what constitutes impermissible restraint or coercion; it rules that in disciplining union members for working during a duly authorized economic strike, the Union so acted as to "restrain or coerce employees" in violation of Section 8(b)(1). The court below has thus elected to "make a fortress out of the dictionary" (*Markham v. Cabell*, 326 U.S. 404, 409) instead of applying a sensitive construction which conforms with the actual intention of the Congress.

That intention, clearly shown by the legislative evidence concerning Section 8(b)(1) recited in the brief for the Labor Board, was not to affect union disciplinary power over members. No purpose would be served by our repetition of the voluminous legislative evidence reviewed in the Board's brief, and we merely note our full agreement with the position there espoused—that this evidence makes crystal clear that Section 8(b)(1) does not restrict the power of labor union discipline over members who violate organizational obligations by such conduct as defiance of a membership decision to engage in an economic strike. In the area of membership discipline, whether it involves a union member working during an authorized strike or a union member joining a wildcat strike, union authority has not been subjected by the Congress to regulation by the National Labor Relations Board.⁴

⁴ Of course, Section 8(b)(1) does come into play if a union, utilizing its statutory bargaining authority, induces an employer to dismiss or otherwise discipline an employee because he has violated his membership obli-

All apart from the conclusive legislative evidence, however, there are other major considerations which support the Board's reading of the statute. Thus, as the facts of the case presently before the Court underline, union discipline remains unaffected by the National Labor Relations Act because (1) membership in the union is not compulsory, (2) allegiance to a duly authorized economic strike is a necessary and time-honored first principle of unionism, (3) reasonable fines collectible by judicial suit are often less rigorous than the summary expulsion from membership which Congress expressly preserved to unions, and (4) the policy of the Act of fostering collective bargaining requires that unions be able to maintain allegiance by members to the common interest as determined by majority rule. Each of these four supporting considerations underlines the correctness of the Labor Board's view and demonstrates the error of the Seventh Circuit's ruling that union efforts to assure the allegiance of members have been impaired by the Congress. We deal with each of these considerations separately below.

A. Disciplinary Fines Were Imposed Only on Allis-Chalmers Employees Who Had Elected to Join the Union and to Accept the Duty of Allegiance Long Recognized as Necessary to Effective Unionism.

1. *Union Membership Not Compulsory.* The UAW members who were fined for working during the Allis-Chalmers strikes had chosen to join the Union, thereby deriving major privileges and subjecting themselves to corresponding obligations. Having joined the Union and having re-

gation to the union. In that situation, Congress has made clear that observance by the member-employee of his obligation to the union and of his obligation to the employer are not to be comingled by the imposition of employment sanctions to enforce union allegiance. See *Radio Officers v. NLRB*, 347 U.S. 17.

mained as members rather than availing themselves of the privilege of resigning, they defied the common decision of the membership to engage in a strike for better contract terms. If union discipline of those who work during a strike was unacceptable to any of the fined persons, they could have avoided it by refusing to join the Union in the first place or by thereafter declining to remain members. Yet the record shows that not a single one of the fined members, even *since* discipline was imposed, has chosen to resign from the Union (R. 30). It is illuminating, too, that this case does not arise from complaint by one of the affected members but from Labor Board charges filed and pressed on to judicial review by the Allis-Chalmers Company. While we make no contention that the Company lacks standing to litigate the present issue, the fact remains that no Allis-Chalmers employee has protested the UAW fines to the Labor Board.

As long ago as 1951 the Court of Appeals for the Seventh Circuit—which has jurisdiction in the area of the Allis-Chalmers plants here involved—definitively ruled that Section 8(a)(3) of the National Labor Relations Act permits no more compulsion in union security arrangements enforceable by employment discipline than the payment of periodic dues. *Union Starch & Refining Co. v. NLRB*, 186 F.2d 1008, *cert. den.* 342 U.S. 815. At the time of the 1959 and 1962 Allis-Chalmers strikes, it was thus already established that no employee could be required to support the Union in any manner beyond the payment of dues moneys; and this was exactly what the Allis-Chalmers contract made clear in requiring UAW adherence by the employee only “to the extent of paying his monthly dues . . .” What *Union Starch* held and what the UAW-Allis-Chalmers contract contained is the maximum union security permissible. In *NLRB v. General Motors Corp.*, 373 U.S. 734, 742, this Court carefully examined the statute and concluded that “Under the second proviso to § (8)(a)(3), the burdens of

membership upon which employment may be conditioned are expressly limited to the payment of initiation fees and monthly dues . . . 'Membership' as a condition of employment is whittled down to its financial core." The considered and unanimous judgment of this Court in *General Motors* was that under the NLRA financial support is the outer limit of union allegiance which may be enforced by employment sanctions. Thus, it is irrefutable that employees who desire to avoid union discipline may do so simply by declining to join the union, and thus remain free of union obligations.

Since in Section 8(a)(3) of the statute Congress has preserved the freedom of employees from compulsory unionism it becomes an idiosyncratic and perverse construction to read Section 8(b)(1)—enacted concurrently with Section 8(a)(3)—as prohibiting discipline of members who choose unionism and then violate their sworn obligation of allegiance. Since Congress in 1947 forbade compulsory union membership and allegiance, there is no arguable ground for suggesting that by mere implication it simultaneously forbade unions—alone amongst a myriad of voluntary associations—from securing their members' organizational allegiance by appropriate discipline of violators. Once it forbade compulsory membership, the proper presumption is that, far from distinguishing between labor unions and other organizations, *Congress left undisturbed the established principle* that the union movement may define the duties of those who voluntarily join with it, and that the law will not curtail but will enforce the duties so defined.

That is exactly the construction which the First Circuit adopted in its reasoned opinion in *NLRB v. UAW*, 320 F. 2d 12, 15, 16. There union members sought to resign from the union without observing the applicable by-law, and asserted that their subsequent discharge from employment

for failure to pay dues violated Section 7 and Section 8(b)(1) of the Act. In rejecting that view, the Court of Appeals noted that while any worker may refrain under Section 7 from joining the union, "*it is quite another thing when the employee eschews his 'reluctance' and voluntarily joins a labor organization. At this point, under our view, the employee takes off the protective mantle of Section 7's 'refraining' provision and renders himself amenable to the reasonable internal regulations of the organization with which he chooses to cast his lot.*" And the Court concluded:

"... under Section 7 of the Act, and in the light of the limited security agreement which obtained between the Company and the Union in the instant case, the subject employees need not have joined the Union. However, once they voluntarily took that step, they embraced not only the benefits but also the burdens which flowed from their union membership. One of those 'burdens' was the duty of comporting with the Union's reasonable internal regulations; a requirement they failed to discharge here."

2. *Privilege of Membership Imports Allegiance.* Like other voluntary associations, trade unions were largely free until recent years from legal restraints on their internal affairs. Nineteenth century doctrine generally excepted private associations from jurisprudential interference. Starting from an original "hands off" policy, courts and legislatures have moved warily toward an increasingly elaborated area of membership rights subject to legal protection. See, generally, Chafee, *The Internal Affairs of Associations Not for Profit*, 43 Harv. L. Rev. 993; Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049. But increasing concern to protect democratic procedures and civil liberty within the union has not

expunged the union's traditional right to establish and the member's corollary duty to honor, those necessary basic obligations which are the counterpart of his rights within it. See, e.g., *Polin v. Kaplan*, 257 N.Y. 277, 281-282, 177 N.E. 833; *Shinsky v. Tracey*, 226 Mass. 21, 114 N.E. 957; *Kitt v. United Steelworkers*, 59 York Leg. Rec. (Pa.) 29; *Snay v. Lovely*, 276 Mass. 159, 176 N.E. 791; *Lawson v. Hewel*, 118 Cal. 613, 50 P. 763. As emphasized in *Oakes, Organized Labor and Industrial Conflicts*, § 61:

"By uniting with the union the member assents to and accepts the constitution and impliedly binds himself to abide by the decision of such boards as that instrument provides for the determination of the disputes arising within the association. The decisions of such tribunals, when organized under the constitution and lawfully exercising their powers, are of a quasi judicial character, and are no more subject to collateral attack for mere error than are the judgments of a court of law. The court will look into the record to ascertain whether the disciplinary proceedings were pursuant to the constitution and by-laws of the association, whether the proceedings were in good faith, whether the charges are substantial, and whether the member has had fair notice and opportunity to be heard; but will not substitute its judgment for that of the organization."⁵

Clearly, a legal doctrine which upholds only membership rights but not membership obligations would undermine the viability of any voluntary association. The logic of this elementary principle, which cannot be seriously controverted, underlies the decisions of this Court in *Elgin, Joliet v. Burley*. Both in its initial opinion remanding the

⁵ See also Summers, *Law of Union Discipline*, 70 Yale L.J. 175, 179; Note, 76 Harv. L. Rev. 983, 995, 1001.

case for interpretation of pertinent union regulations (325 U.S. 711), and in its subsequent opinion on rehearing clarifying its original mandate (327 U.S. 661), this Court reaffirmed the established proposition that members of unions are bound by the terms and conditions of their membership. In *Elgin, Joliet*, a union acting on behalf of and with the knowledge of a number of its members, had settled a money grievance which those members had against their employer, and had represented them before the National Railroad Adjustment Board in proceedings which resulted in a ruling that the settlement, made by the union on behalf of its members, by its terms precluded further claims arising out of the same grievance. Subsequently, an action was brought for recovery on the same claim which had been settled and released by the union. The question reviewed by this Court was whether the union had been authorized to settle the individual worker-member's claim. Although the Court found that it lacked sufficient information on which to make a final decision on the question of the union's authority to settle, the opinion remanding to the lower court for further findings explained (325 U.S. at 738, n. 38) that such authority

"might be conferred in whatever ways would be sufficient according to generally accepted or 'common law' rules for the creation of an agency, as conceivably by specific authorization given orally or in writing to settle each grievance, by general authority given to settle such grievances as might arise, or by assenting to such authority by becoming a member of a union and thereby accepting a provision in its constitution or rules authorizing it to make such settlements."

Before the remand order had issued, this Court granted rehearing. In its opinion on rehearing the Court's reliance on the union constitution, by-laws, and rules as the basic

documents governing and binding union members was re-emphasized (327 U.S. 661, 663, n. 2):

"Furthermore, so far as union members are concerned, and they are the only persons involved as respondents in this cause, it is altogether possible for the union to secure authority in these respects within well established rules relating to unincorporated organizations and their relations with their members, by appropriate provisions in their by-laws, constitution or other governing regulations, as well as by usage or custom . . ."

Thus, this Court in *Elgin, Joliet* gave full effect to the obligation undertaken by the union's members to accept the union's representation of their working rights, even to the extent of settling and extinguishing "vested" money benefits earned by the individual employee-member. The dissenting opinion by Justice Frankfurter (325 U.S. at 757-758) aptly summarized the proposition which in *Elgin, Joliet* commanded the approval of the entire Court and underlay its ultimate ruling, observing that with respect to union membership:

"If resort to courts is at all available, it certainly should not disregard and displace the arrangements which the members of the organization voluntarily establish for their reciprocal interests and by which they bound themselves to be governed."

Of significance, too, is the fact that both opinions upholding this principle were issued only a short time before the enactment of Taft-Hartley. The proximity of these decisions to the enactment of Section 8(b)(1) adds further support, if any were needed, to the proposition that Congress could not have intended by mere implication to deprive

unions of a basic right so recently confirmed by the highest court of the land. It is doubly improbable that the accepted power of unions to define the terms and duties of membership which this Court honored in *Elgin, Joliet* should have been impaired by mere implication in the very statute which *prohibited* compulsory unionism.

Had the Congress in the text and legislative history never spoken on the subject of union discipline, there would still be no warrant for deeming time-honored union disciplinary power extinguished by the general "restrain or coerce" clause directed to *employee rights* rather than *union member* privileges and obligations. But Congress having provided ample legislative history, and having expressly preserved union discipline by the proviso to Section 8(b)(1) (A), it becomes even clearer that the freedom from compulsory membership which Congress preserved in Section 8(a)(3) repels the statutory construction indulged by the majority in the lower court. The correct reading, which preserves the manifest Congressional intention, is that Section 8(b)(1), read in tandem with Section 8(a)(3)'s prohibition on compulsory membership, does not concern itself with labor union discipline to enforce allegiance of members to organizational obligations. That construction is all the more appropriate, as we next show, where the organizational obligation being enforced by discipline is the long-recognized first duty of union members to respect a collective strike for improved working conditions.

B. Adherence to a Membership Strike for Improved Working Conditions Is a Time-Honored First Duty of Unionism.

Among the recognized obligations of union membership, the clearest is the obligation to respect the collective strike, which is the very essence of unionism and the first principle of union action. The withholding of labor by an economic

strike lies at the very heart of the association of workers in a union, and indeed often constitutes the catalyst by which the union is nurtured.

The strike is today generally viewed as the most important weapon of trade unionism. When the right to strike suffered serious abridgement from hostile courts and legislatures during the early decades of this century (Frankfurter & Greene, *The Labor Injunction, passim*), Congress in 1932 enacted "protective" legislation in the Norris-LaGuardia Act intended to bar further "government by injunction". Not content with that remedial measure, a few years later Congress in the Wagner Act granted power to the new Labor Board to secure the right to strike. A number of witnesses testifying in 1934 and 1935 pleaded for Congressional protection and preservation of labor's right to strike; for example, Sidney Hillman, President of the Amalgamated Clothing Workers, emphasized and praised the Wagner bill's "*proper provisions for guaranteeing labor the right to strike, a right that labor cannot possibly give up under any conditions . . .*" Hearings on S. 2926 Before the Senate Committee on Education and Labor, 73rd Cong., 2d Sess. 123 (1934). The chairman of the House Labor Committee, co-author of the bill, referred to the right to strike as "not a right that comes from Congress, but . . . a divine right which comes from the Almighty God" (79 Cong. Rec. 9730). As finally enacted, the statute expressly preserved the right to strike (Section 13) and gave meaningful protection to economic strikers and unfair labor practice strikers against discharge, replacement, and discipline.

A decade later, Senator Robert Taft, the conservative Majority Leader of the Senate, reaffirmed the sanctity of labor's valued strike weapon. He recognized that in his Taft-Hartley bill, "we have proceeded on the theory that there is a right to strike and that labor peace must be based on free collective bargaining" (93 Cong. Rec. 3835). And,

in defending the bill's national-emergency-strike provisions against those who advocated that such a strike be outlawed, Senator Taft stated that:

"... we have not forbidden it, because we believe that the right to strike for hours, wages and working conditions in the ultimate analysis is essential to the maintenance of freedom in the United States ... our freedom depends upon maintaining the free right to strike" (93 Cong. Rec. 7537).

Consistent with Senator Taft's statements, the Taft-Hartley Congress left the right to strike basically unimpaired.

The Congressional recognition in 1932, 1935 and 1947 of the strike as labor's indispensable weapon reflects the prevalent understanding derived from our national labor relations experience. As Professor Charles Gregory has written (*Labor and the Law*, p. 106): "Combination and concerted action are the very backbone of the whole union movement. While devices like picketing and refusals to patronize are important phases of concerted action, virtually the entire structure of a union's self-help program rests on one simple practice—the refusal to work. The strike is the most simple manifestation of this practice. Indeed, it is, in a manner of speaking, its only manifestation."

In view of the central significance of the strike to the existence of the union and the perpetuation of its members' interests, it has long been recognized that unions may properly discipline members who defy an authorized strike as well as those who engage in an unauthorized strike. "... to maintain efficiency as an effective bargaining unit, a union may discipline members who persist in working on an unfair job or to the detriment of a strike, and those who engage in unauthorized strikes" (76 Harv. L. Rev. 983, 1012-1013; see also Summers, *Law of Union Discipline*, 70 Yale L.J. 175, 188-189). The basis upon which union dis-

ciplinary power to control the strike weapon is legally recognized was aptly set forth in a decision of the Supreme Court of Massachusetts which upheld severe union discipline of a member defying a strike edict. In *Clark v. Morgan*, 271 Mass. 164, 169-171, 171 N.E. 278, the Court ruled:

"The plaintiff . . . agreed to be bound by the rules of the organization and subjected himself to its discipline. . . . The district council . . . had jurisdiction of offenses against the general laws committed within its jurisdiction by members from outside locals. It is true that the particular offense charged against the plaintiff is not specifically prohibited. But the constitution of the brotherhood enacted that any member who is guilty of improper conduct 'or wrongs a fellow-member * * * or commits an offense discreditable to the United Brotherhood, shall be fined, suspended or expelled.' The plaintiff was a member of the union. He testified that he knew no member should work on a job on which there was a strike, and he admitted that, according to the well known custom, it violated the constitution to work under such conditions if known; that it was injurious to his fellow members to be so employed. As bearing on this question, parol evidence was admitted . . . showing that by long established usage, universally acknowledged, the offense charged against the plaintiff could be punished by the brotherhood or its district councils. This evidence, in our opinion, was admissible, not to contradict the written constitution, but to show the universal usage or custom in dealing with such complaints as working with nonunion men or working for one against whom a strike had been called."

The power to discipline members for helping break a strike and for unauthorized strikes is an indispensable attribute of union solidarity.⁸ "The power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent" (Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049), because working during a strike "undercuts the union's principal weapon and defeats the economic objective for which the union exists" (Summers, *Disciplinary Powers of Unions*, 3 Ind. & Lab. Rel. Rev. 483, 495).

No less necessary to union control of the valued strike weapon is union power to discipline wildcat strikers—a power which the statutory construction by the court below would equally impair. If the statute should be deemed violated by union discipline of members in the area of strike participation, it is as much violated by discipline of unauthorized strikers as by discipline of those who work during an authorized strike. The majority below seeks to

⁸ "It is so obvious that a union may punish its members for engaging in an unauthorized strike that the courts have never bothered to discuss the matter. A parent union may even revoke the charter of the local which engages in a wildcat strike and thereby expel all of the members in that local. Disciplining wildcat strikers may not only be a power but a positive duty of the union. Thus, a parent union has suspended a local because it failed to prosecute aggressively individual strikers, and in another case, an arbitrator held that under the special terms of the collective agreement involved, the union had broken its contract by failing to discipline members who had engaged in a stoppage.

"Strikebreakers receive little more protection than wildcat strikers. The union may punish not only those who do the work of men who are on strike, but also those who give the employer any other aid during the strike. Thus, a federal court upheld the expulsion of a member of the Locomotive Engineers who allowed the employer to use his name in suing to enjoin the strike. Even though the member felt the strike was unwise, improper, and highly unpatriotic, this conduct, the court pointed out, was viewed by the union to be the equivalent of treason—it was adherence to the enemy in time of struggle, giving him aid and comfort." Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049, 1065-1066.

avoid the force of this point by suggesting that discipline of those who engage in a wildcat strike presents a different situation from the case at bar, because wildcat strikes "are not protected activities" under the Act (R. 103). True, during the life of a collective bargaining agreement containing a no-strike clause, striking is unprotected; but at the contract's expiration the statutory right to strike is fully restored. Thus, in construing the Act as precluding a union from fining members who work during an authorized strike, the court below necessarily precludes the fining of members who engage in an unauthorized strike.

The Court of Appeals for the Fourth Circuit has had occasion to review a case where severe disciplinary action had been taken against a local and its members for engaging in a strike not authorized in accordance with the union's constitution. In *Parks v. IBEW*, 314 F.2d 886, 905-6, cert. den. 372 U.S. 976, in approving such discipline the Court emphasized, in terms pertinent to the issue presently before this Court, the integral interest of a union in policing the subject of strike participation:

"... the District Court found that the IP [International President] had been motivated in part by a legitimate desire to discipline the Local, its members and officers, for having engaged in an unauthorized strike even after his repeated orders to return to work. *

"The calling of a strike is such a momentous step in a labor controversy that it is usually subjected to strict control by international unions. The strike is a weapon that can bring an employer to his knees; but the effect on the employer can be too devastating for the union's own good. In addition, a strike can result in undue loss of production, harmful to the public, and a strike can waste a union's funds and otherwise

weaken it in its continuing effort to better its adherents' wages and working conditions.

"It is widely felt that vesting control in the international over the strike weapon assures that generally only intelligent and responsible use will be made of it after the greater interests of the international and the general economy have been considered. Such is the potential harm from indiscriminate resort to strikes that Professor Summers has commented that an international is justified in adopting severe disciplinary measures, including expulsion of individual members or revocation of a local union's charter, when an unauthorized strike has been undertaken. Summers, 'Legal Limitations on Union Discipline,' 64 Harv. L. Rev. 1049, 1065-1066 (1951).

"The refusal to sanction the June strike cannot be said to be a breach of a fiduciary duty owed the plaintiffs under the Constitution. If the IP believed that an appropriate Council clause could be negotiated and that Local 28 was excessive in its demands and 'shooting for the moon,' it was his prerogative to restrain the Local, and if possible to counteract its headstrong determination to wage a strike that could adversely affect the cause of his international organization. His duty was to 750,000 members, not merely to a few who might gain a short-range advantage that could prove costly to the parent body, the employers, the public and, in the long run, to the plaintiffs themselves. The International was dealing day by day with many chapters of NECA and the International's relations with NECA were important to the welfare of all 150,000 who worked in the construction industry."

No one could reasonably question the necessity for union control over wildcat and other unauthorized strikes. Labor-management relations are largely predicated upon the union's promise and ability to control such strikes. Congress could hardly have intended to permit union discipline of members when they strike but to deny unions the right to require membership adherence to an authorized strike. In fact, Congressional recognition of necessary union disciplinary power against both members working during authorized strikes and those engaging in unauthorized strikes was manifested in the debates preceding enactment of Section 8(b)(1) in 1947. On the floor of the Senate an amendment was moved by Senator Ball (93 Cong. Rec. 4442) to limit disciplinary powers of national and international unions over their locals in certain instances, including the situation (see remarks of Senator Taft at 93 Cong. Rec. 4444, 4452, 4580) in which a local declines to continue a strike ordered by a parent union. The amendment was ultimately defeated (93 Cong. Rec. 4676) after the opponents emphasized the necessary power of union discipline, including power to preserve control of the vital strike weapon. As Senator Ives stated it (93 Cong. Rec. 4583, 4674):

"... in what is being attempted here we are encouraging the local set-up, the local organization, to break away. What is proposed would destroy responsibility, which is basic in labor organizations ... there is one feature in the labor relations picture which is absolutely vital. There can be no responsibility unless there is some control and authority somewhere. By the destruction of such control and authority, the responsibility itself also is destroyed. I think that should be definitely understood in considering the pending amendment."

Senator Taylor objected to the amendment (93 Cong. Rec. 4587) stating that:

"... if a national labor organization has no power to impose sanctions of any kind upon a subsidiary union how can it hold together? ... If the parent organization has no power to discipline the local organization at all, to revoke its charter, or even take its funds if it disobeys the rules and regulations laid down by the parent organization which it knew about when it joined the parent union—if the parent union has no power to do those things, it would disintegrate completely ... the local union could strike and could do anything it pleased ..."

Senator Morse emphasized (93 Cong. Rec. 4670, 4675) that local unions:

"... voluntarily become parties to the international union. This amendment would enable them to abide by the constitution of the international union according to their own pleasure; but when it did not please them to abide by it, irrespective of the effect their conduct might have on other locals which likewise agreed to become members of the international union, they would have the right, in effect, to secede ... to the extent of repudiating the obligations which they agreed to carry out when they became members of the international union ... I think it is very important to emphasize, in the closing minutes of this debate, that international unions have their constitutions approved by the local unions ... When we come to the major strike cases we find in most instances that such strikes are called after the delegates of the local unions, working through the international policy committee to carry out the wishes of the local union, have voted for strike action."

The necessity of union disciplinary power to assure continuing allegiance by the membership, which the 1947 debates underlined, has even more recently been Congressionally confirmed. In 1959 union authority to require and enforce by discipline the member's allegiance to the common cause was expressly secured by the Congress. Section 101(a)(2) of the Landrum-Griffin "Bill of Rights", as originally proposed by Senator McClellan, provided freedom of speech rights for members within a union (105 Cong. Rec. 6475). However, it soon became clear that even as valued a right as freedom of speech has to be subject to some limitation when it comes to speech advocating acts which undermine the union and its cause (see 105 Cong. Rec. 6719; 6726). Accordingly, Senator Kuchel proposed and Congress accepted a reservation to this section which provides *"that nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations"* (105 Cong. Rec. 6693, 6727).

Commentators on this Landrum-Griffin proviso agree that it means no less than what it says: a union must have self-protective disciplinary power over its own members, which includes the right "to adopt and enforce reasonable rules as to the responsibility of every member toward the organization." As Professor Archibald Cox states it (*Internal Affairs of Labor Unions*, 58 Mich. L. Rev. 819, 834-835): "... dissent in a union, like treason within a nation, must be suppressed if the purpose is to destroy the union, encourage a rival, or bring about the violation of legal or contractual obligations. Section 101(a)(2) contains an exception for these cases." Former Labor Board General Counsel Rothman agrees (*Legislative History of the "Bill of Rights" for Union Members*, 45 Minn. L. Rev.

199, 207) that the proviso was written to permit "the union to guard against anti-union activities within the union."⁷

How can Congress be deemed to have forbidden in 1947 in Section 8(b)(1) of Taft-Hartley what it has specifically approved in the "union responsibility" proviso of Landrum-Griffin? Or, put another way, on what possible premise would Congress have protected a union disciplinary power in the 1959 Act which unions were already forbidden to exercise under the NLRA? Such sheer idiosyncrasy cannot be ascribed to Congress in its 1959 enactment of the Section 101(a)(2) proviso. Rather, Congress can only be deemed in 1947 to have left unimpaired traditional union discipline to assure membership solidarity during authorized strikes and the ability to prevent unauthorized strikes.⁸ And, having left traditional union discipline unimpaired, there is no warrant, as we next show, for implying congressional hostility to a fine as distinguished from other disciplinary methods.

⁷ "The member's institutional responsibility probably does not include a duty to refrain from criticism of the union hierarchy, even to the point of slander or libel, but it probably does include the obligation to refrain from acts which would tend to undermine or disrupt the organization as such. This no doubt encompasses 'dual unionist' conduct as generally understood." Smith, *The Labor-Management Reporting and Disclosure Act of 1959*, 46 Va. L. Rev. 195, 204.

⁸ It is a fair reading of the history of labor legislation that the first time Congress really directed its attention to union discipline (beyond the narrow area involved in *Radio Officers*) was not in 1947 but twelve years later when the McClellan Committee hearings focused attention on needed reform. Landrum-Griffin rather than Taft-Hartley deals with the subject of union discipline, and Section 101(a)(5) of the 1959 statute actually confirms that union members "may be fined, suspended, expelled, or otherwise disciplined." Landrum-Griffin was the first manifestation, and constitutes the present extent, of Congressional limitation upon union discipline. And, far from precluding such discipline, the 1959 legislation recognizes the appropriate role of discipline to assure "the responsibility of every member toward the organization."

C. Reasonable Fines Collectible by Legal Action Offend No Congressional Norm and Are Frequently Less Rigorous Than Summary Expulsion From Union Membership.

In the preceding discussion we have emphasized that Congress—at the very time that it enacted Section 8(b)(1)—assured that labor union membership cannot be compelled, and continued to recognize the necessary power of union discipline to enforce reasonable norms of allegiance by the membership. These considerations, we have urged, give additional support to the text and legislative history of Section 8(b)(1) upon which the Labor Board primarily relies. But perhaps we have labored unnecessarily to demonstrate that reasonable union discipline is a power left unimpaired by the statute, for actually the Company has not squarely espoused a contrary construction nor, it would appear, has the court below. The thrust of the Company's objection which the lower court appears to have accepted is limited to the point that instead of suspension or expulsion the Union has chosen as the means of discipline the imposition of judicially-collectible monetary fines.

But “the limits which the courts have placed on union discipline seem to have no relation to the severity of the penalty imposed, but are instead governed by the conduct which the union has sought to punish and the procedure used for determining the member's guilt.” Summers, *Law of Union Discipline*, 70 Yale L.J. 175, 179. If the statute does not bar union power to discipline members who violate their obligations of allegiance by working during an authorized strike, it cannot be that the imposition of modest fines constitutes some special and uniquely impermissible sanction which Congress implicitly forbade in contrast to other forms of union discipline. Indeed, fines constitute a traditional and historically ac-

cepted means of discipline against offending union members. As stated in a comprehensive survey by Professor Clyde Summers (*Disciplinary Procedures of Unions*, 4 Ind. & Lab. Rel. Rev. 15, 26; cf. Mass. Gen. L., c. 180, Sec. 19, Act of 1911, C. 431):

"The culminating element of union discipline is the infliction of a penalty on the convicted member. The three common types of penalties for offenses are fines, suspension for a limited period, and expulsion . . . [and] the most common form of penalty is the fine."

Consistent with the established union power to fine offending members, no decision prior to this case either under the National Labor Relations Act or the common law has denied union authority to fine members who violate their organizational obligations. Decisions which have confirmed that authority include the rulings of the Seventh Circuit in *NLRB v. Amalgamated Local 286*, 222 F. 2d 95; the D.C. Circuit in *Barker Painting Co. v. Brotherhood of Painters*, 23 F. 2d 743, cert. den. 276 U.S. 631; and the Wisconsin Supreme Court in *UAW v. Woychik*, 5 Wis. 2d 528, 93 N.W. 2d 336; cf. *Rothstein v. Manuti*, 235 F. Supp. 39, 45-46; *Simpson v. Painters and Glaziers District Council No. 51*, 39 LRRM 2131 (D.C.D.C.); *Rubens v. Weber*, 260 N.Y.S. 701, 237 App. Div. 15; *United States Rubber Co.*, 21 War Lab. Rep. 182; *Otto v. Journeymen Tailors' P & B Union*, 75 Cal. 308, 17 P. 217; *Meurer v. Detroit Musicians Benevolent & Protective Association*, 95 Mich. 451, 54 N.W. 954; *Fuerst v. Musical Mutual Protective Union*, 95 N.Y.S. 155; *McGinley v. Milk & Ice Cream Salesmen, D&D*, 351 Pa. 47, 40 A. 2d 16; *Monroe v. Colored Screwmen's Benev. Ass'n*, 135 La. 893, 66 So. 260. As long ago as 1867, a landmark New York ruling in a suit for collection of a fine upheld union power to fine a member for violation of his organizational obligations. In *Master Stevedores' Association v. Walsh*, 2 Daly 1 (N.Y. Common Pleas), the Court upheld a

\$125 fine as an appropriate discipline for violation of the obligation of a member of a stevedores' union not to work for less than the union-prescribed rate of pay. In so doing, the Court (at p. 10) relied heavily upon an English statute (the Act of 5 George IV c. 95) as declaring for the first time the lawfulness of associations for the purpose of "determining the rate of wages which the persons so assembling shall require or demand" and recognizing that "they may enter into any agreements . . . among themselves, for the purpose" sanctioned by the statute. Having thus upheld the underlying organizational norm whose violation had led to the monetary fine imposed, the Court concluded (at pp. 13-14):

"If the by-law is one which it is in the power of the corporation to make, it has the power also to attach to it a penalty for the purpose of enforcing it. All who become members of the corporate body are bound by it, and where the penalty is incurred an action may be brought in the name of the corporation to recover it . . . The proper mode of enforcing a by-law is by a pecuniary penalty . . . The words of the by-law are, that the party shall forfeit to the association twenty-five per cent of the amount of such bill as fixed by the association, *which penalty* may be collected by due process of law . . ."

The Company, without citing a single precedent, persistently refers to a judicially-collectible union fine as "coercion", seeking thereby to equate that sanction with the inducement of an employer to dismiss or otherwise discipline a worker which Section 8(b)(1) forbids. But the law has never regarded legal sanctions—particularly sanctions flowing from a court judgment enforcing a fine or debt—as synonymous with coercion. Every system of legal sanctions, from the lowest form of traffic fine for violating the rules of the road to compensatory and liquidated dam-

ages for breach of contract, is coercive in the sense that it seeks to compel general obedience to a prescribed norm. But rather than *coercion*, judicial processes are *remedies* to secure the observance of contractual agreements and other binding rules of conduct. It is unthinkable that Congress, recognizing the propriety of union discipline in general, should have deemed judicially-collectible fines uniquely coercive when it adopted Section 8(b)(1)(A).

Moreover, while in some circumstances an individual union member might find non-monetary discipline—even dismissal from the union—preferable to paying a fine, it is clear that the latter may frequently be far less serious. For the offending member suspension or outright expulsion from union membership may mean loss of such valuable privileges as, for example, group insurance, death payments and similar benefits. And, since an affirmative award by a court is required before a union can collect a fine against a dissident member who refuses to pay, one who objects to the amount or the circumstances of a fine imposed upon him has full judicial protection in the court wherein suit is commenced for collection. Thus, upon comparing the relative compulsions and rigors of reasonable judicially-collectible fines on the one hand and summary expulsion from a union on the other, it seems evident that the former are often the less severe: Expulsion is a terminal act of self-help by the union which may have the most serious unfavorable consequences upon the individual affected; suit for collection of a disciplinary fine invokes the judicial process, which centuries of experience approve as the best means for protecting the rights of contending parties.⁹ This comparison leaves no room for

⁹ Expulsion or suspension may be more drastic for yet another reason. The fined member may desire, as in the case of some Allis-Chalmers workers, to pay his penalty and avoid further controversy with his union. But where the punishment is expulsion or suspension, no comparable opportunity exists for the disciplined member to regain his organizational rights by the expedient of compliance.

the implication that Congress, while sanctioning dismissal from the union, singled out judicially-collectible disciplinary fines for proscription.

All apart from the unwarranted characterization of collectible fines as confiscation and coercion, there is also no merit to an analogy with the employment sanctions which Congress in Section 8(b)(1) has forbidden to unions for enforcing membership obligations. When it comes to such employment sanctions, Congress was concerned with the dual role of unions, which as collective bargaining representatives are in a position to induce an employer to discipline a worker who has defaulted on his obligations not to the employer but only to the union. Accordingly, what the Congress said in this area, and all that it said, is that the union may not turn to the employer for assistance in disciplining a union member. But the fact that Congress has barred a union's recourse to employment sanctions to enforce its members' allegiance hardly demonstrates that Congress has precluded a union's unilateral disciplinary action by which it seeks to hold members to their organizational obligations.

In sum, once it is recognized that reasonable union discipline of members who violate their allegiance obligations was left intact by Section 8(b)(1), there is no merit to an attack which would single out judicially-collectible fines as a uniquely objectionable means of discipline. Congress nowhere having disparaged union disciplinary fines, judicial engrafting of such a prohibition upon the statute would arrogate the legislative function.

D. The Statute's Purpose to Promote Effective Collective Bargaining Precludes the View That Section 7 Safeguards a Union Member's Right to Defy the Common Cause as Determined by Majority Rule.

The discussion to this point has proceeded largely upon the assumption that Section 7 of the Act protects the right of abstention from strike participation, and that the issue for decision is whether Congress in Section 8(b)(1) intended to reach discipline of union members who defy an authorized economic strike. But there is also a question whether Section 7 actually protects the right of one who has chosen to join a labor union to defy reasonable union action undertaken in the common interest by the majority rule process. Thus, even if all of the Section 8(b)(1) considerations and arguments we have advanced above were somehow to be rejected by this Court, there would still remain a serious question whether under Section 7 itself Congress has secured a right of union members to defy and subvert authorized union action.

That question becomes the more acute in the present case, where the Section 7 right of defiance said to belong to a dissident union member would impair the live-or-die power of the union to invoke an effective strike for improved collective bargaining benefits. After all, the central purpose of the Congress in enacting the National Labor Relations Act, as this Court has often emphasized, was the promotion of labor-management agreements through genuine collective bargaining. Every statutory construction issue under the Act is appropriately resolved against the background of that central Congressional purpose. And certainly there is manifest disruption of orderly labor-management relations in the denial to unions of power to control the crucial strike weapon—a disruption which

strongly militates against the statutory construction espoused by the court below.¹⁰

Ultimately, the argument that the Union has violated Section 8(b)(1) reflects a literalistic effort to prove a violation of the Act through arithmetic progression. According to the Company, (1) Section 7 protects an employee's right not to strike, (2) the UAW members fined for picket-line crossing are employees, (3) *ergo* their Section 7 rights were violated, and (4) it follows inexorably that the Union violated their Section 8(b)(1) rights. One obvious hole in this progression is in the very first assumption. While Section 7 does protect an employee's right not to strike, it does not protect the right of a *union member-employee* to defy a union strike—it does not grant an employee the simultaneous right of union membership and union disobedience.

This Court in *NLRB v. Drivers*, 362 U.S. 274, 280, recognized that Section 8(b)(1) is not subject to mechanical application. Rather, the Court noted that tension may exist "between the two rights of employees protected by §7—their right to form, join or assist labor organizations, and their right to refrain from doing so." In the present case,

¹⁰ To the view that Section 7 gives a union member immunity from a disciplinary fine if he crosses a duly authorized union picket line, the Circuit Court for Milwaukee County has made the following appropriate response in the *Natzke* case, involving collection of a fine against a UAW member disciplined for working during the 1959 Allis-Chalmers strike (unpublished opinion of March 3, 1964, Case No. 313-673):

"... [Section 7] gives employes the right to refrain from any or all of the activities above mentioned except to the extent that such right may be affected by a "closed shop" agreement and also by the extent to which an employe joins a union. In this case the defendant was found to be a full member of the union for all purposes and, therefore, there was no express right of the defendant violated.

"As was stated in *Local 248, U.A.A. & A.I.W. v. Wis. E.R. Board*, 11 Wis. (2d) 277, 288: 'A union without power to enforce solidarity among its members, when it resorts to a strike in an effort to force an employer to agree to its collective-bargaining demands, is a much-less-effective instrument of collective bargaining than a union which possesses such power. A union must have authority to discipline its members, otherwise it will have no power to bargain effectively.'

too, a "tension" exists but it is of a somewhat different order. Here we do not have one group seeking unionization while another is in opposition. Instead, certain union members sought to enjoy the privileges of unionism without paying the elemental price of loyalty to their fellow members. *Their conduct was not an assertion of the statutory right to refrain from forming, joining and assisting unions—a right they had renounced by joining the UAW; rather, it was a violation of the right of the striking unionists to engage in a Section 7 activity without subversion by their fellow members.* No Section 7 right of the dissident members was violated by their discipline, but their defiance of the strike *did* violate the Section 7 right of their co-unionists to engage in effective union and concerted strike activities.

Section 7 of the Act safeguards an employee's right to strike and his right to refrain from striking, but in neither instance is the right absolute. Thus, the right to strike bows before a collective agreement wherein the union consents to a "no strike" clause (*NLRB v. Sands Mfg. Co.*, 306 U.S. 332) and before an internal regulation against membership strikes unauthorized by the union (*Parks v. IBEW*, 314 F. 2d 886). And this Court ruled in *American Ship Building Co. v. NLRB*, 380 U.S. 300, 310, that an employee's right to refrain from striking also bows before the employer's right in certain circumstances to undertake a lock-out of all his workers which in effect forces them into the equivalent of a strike. Just as much as the employer's economic interest in the face of a possible strike was recognized in *American Ship* to permit a lockout precluding employees from working, the union has the economic right to make its strike effective by a solidarity rule requiring all its members to respect the strike.¹¹

¹¹ The closest parallel, we submit, exists between the present issue and the one before this Court in *NLRB v. Rockaway News Supply Co.*, 345 U.S. 71. There, the union and employer having agreed to a no-strike clause, a union member, by refusing to cross a picket line, participated in a strike

Of course, the union cannot impose arbitrary restrictions or penalties as a condition of membership. A union by-law imposing racial or religious discrimination, restricting fundamental rights of speech or expression by individual members, or requiring political contributions by members, presents considerations beyond those involved in the present case. Professor Cox properly notes, in discussing the expulsion of members from labor unions, that "possibly one can generalize by saying that an expulsion is permitted for conduct endangering normal trade-union objectives, but that an expulsion will be set aside if the alleged misconduct consisted of the performance of a civic duty or the exercise of personal civil liberties." *The Role of Law in Preserving Union Democracy*, 72 Harv. L. Rev. 609, 617. Legal limitations on union discipline become appropriate where the intrusion on individual action which the union imposes on the member is unauthorized by the governing organizational rules or so irrelevant to the legitimate collective interest as to be wholly arbitrary and unreasonable. See, e.g. *Meurer v. Detroit Musicians Benevolent & Protective Association*, 95 Mich. 451, 54 N.W. 954; *Otto v. Journeymen Tailors, P&B Union*, 75 Cal. 308, 17 P. 217; *Schneider v. Local Union No. 60*, 116 La. 270, 40 So. 700.¹²

not authorized by the union. He was discharged from employment by arrangement between the union and the employer after he had refused admonitions to return to work. This Court ruled (at pp. 80-81) that notwithstanding the protected right to strike an employee may be discharged for breach of a no-strike agreement "without violating Section 7 of the Act." It specifically held that the union and the employer are empowered to contract both a guarantee against "requiring an employee to cross a picket line" and a guarantee that he will do so if a strike has been contractually forbidden. We submit that if, as this Court held in *Rockaway News*, an employee's Section 7 right to strike may be waived without his consent by the union in a contract with the employer, it follows a fortiori that an employee may, by joining the union, effectively waive both his right to strike without the concurrence of the union and his right to defy an unauthorized union strike.

¹² In *Local 138, Operating Engineers (Charles S. Skura)*, 148 NLRB 679, and subsequent rulings, the Board has found Section 8(b)(1) violated

But, as this Court emphasized in a related context, when "within reasonable bounds of relevancy" the union's determination of the general rule necessarily overrides minority interests and "complete satisfaction of all who are represented is hardly to be expected." *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338, 342. Here we have not intrusion on a protected individual liberty, but a wholly reasonable regulation in the interest of the entire group. Workers are free, under the Section 7 right of concerted action, to associate themselves in a union and to require that those who would be members abide by reasonable regulations in the common interest. Conversely, individuals cannot assert a federally protected liberty to join labor unions on their own terms, abiding only by those regulations which they choose to honor. In the union's collective bargaining representation of its members and of the class of employees comprising the bargaining unit, "individual advantages or favors" must give way to the majority interest. See *J. I. Case Co. v. NLRB*, 321 U.S. 332, 339. In like manner within the union—and particularly with respect to such a cru-

by union discipline of members for filing unfair labor practice charges with the Board. The *Skura* rule would appear to be inconsistent with the legislative history of Section 8(b)(1) upon which the Board relies. Whether it can stand at all would, in our judgment, depend upon the reasonableness of the challenged rule which the union has enforced. But even if in extreme situations union discipline for filing Labor Board charges is struck down as unreasonable, it remains clear that none of the considerations reached in favor of a violation of the Act in *Skura* arises in the present context. Thus, with respect to union discipline for filing a charge with the Labor Board, it must be noted that (i) there is an express prohibition in Section 8(a)(4) on an employer disciplining employees going to the Labor Board and symmetry supports a like prohibition on the union; and (ii) the First Amendment might be deemed to protect the right to file a charge with the National Labor Relations Board. Whereas the norm enforced by union discipline in *Skura* might be deemed subject to possible challenge as unreasonable, the norm of strike solidarity which underlies the present case is an entirely reasonable and necessary protection of the union and of its key weapon for promoting the legitimate interests of its members. The Board's expert judgment that there is no violation of law should command judicial deference even if its finding of violation in *Skura* situations may ultimately be upheld.

cial matter as solidarity in a strike for improved collective bargaining benefits—majority rule must govern, and those unwilling to abide by the majority rule system have the alternative to forego union membership. What they *cannot* do is simultaneously to claim union membership and a statutory right to abstain from union allegiance.

Conclusion

For the reasons stated above, the Labor Board's interpretation of the Act reflects the only rational result which comports with the Congressional intent. The judgment of the court below should accordingly be reversed,

Respectfully submitted,

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DEC 20 1966

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States
October Term, 1966

No. 216

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

**ALLIS-CHALMERS MANUFACTURING COMPANY and INTER-
NATIONAL UNION, UAW-AFL-CIO (LOCALS 248 and 401).**

**MOTION FOR LEAVE TO FILE A
BRIEF AMICUS CURIAE**

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**MOTION FOR LEAVE TO FILE A
BRIEF AMICUS CURIAE**

This motion is made on behalf of The New York Times Display Advertising Salesmen Steering Committee for leave to file a brief *amicus curiae* in the above-entitled case.

The Intervenor

The New York Times Display Advertising Salesmen Steering Committee is an unincorporated association of some 43 employees of The New York Times. The Committee is wholly independent of any labor organization or any company or management group; the expenses of the Committee are paid by contributions of the individual members.

The Committee was formally organized in January 17, 1966, as a consequence of the extension of the labor contract's union shop provisions to certain members of the group. Prior to the most recent collective bargaining agreement, some but not all of The Times' advertising salesmen were subject to compulsory union membership; to all intents and purposes, the exceptions to compulsory unionism were removed by The Times and the Newspaper Guild in the contract effective March 31, 1965. Since its organization, the Committee has acted on behalf of its members in a number of ways, including the filing of a deauthorization petition with the National Labor Relations Board and the provision of advice and legal counsel to the individual members as to the limits of their compulsory obligations to the Newspaper Guild.

The Committee's Interest in this Proceeding

The Newspaper Guild is now in the process of subjecting some 23 members of the Committee to a trial for the "anti-union offense" of having crossed a Newspaper Guild picket line in 1965.

Under Article XII, Section 3 of the Constitution of the American Newspaper Guild, it is provided that:

"Upon a verdict of guilty of any charge, the Trial Board may impose a penalty of expulsion; suspension; *fine*; public reprimand or admonishment; special remedial action appropriate to cure the offense; *other penalty appropriate to the offense*; or any combination thereof, and the Trial Board shall determine when any such penalty has been satisfied. Pending satisfaction of a penalty, except expulsion, a penalized member shall be a suspended member as defined in Article X, Section 4 of the ANG Constitution." [Emphasis added.]

Thus, it may be seen that the individual members of the Committee are exposed to financial penalties of *indeterminate amount* and conceivably might be ordered to pay fines amounting to hundreds of dollars each. The Guild Trial Board has already had three hearings for the purpose of imposing these penalties. The Committee has objected from the very outset to these repeated hearings as simply another form of harassment. The representative of the members of the Committee appeared in the Guild proceedings and stated that the individuals involved have no interest in continuing their membership in the Guild.

Neither the intervenors nor the employees in the *Allis-Chalmers* case seek to interfere with the way the respective unions order their internal affairs or control and withdraw rights to membership except insofar as such membership affects job tenure. The individual intervenors have been assured that as long as dues are paid the law does not permit them to lose their jobs for other infractions of union rules. However, the law would certainly seem a ridiculous thing to these men if they were to discover that it protects them from losing \$1,000 by being fired or suspended but it does not protect them from losing that same \$1,000 by being fined for the precise conduct which has been immunized from other discipline.

Not only have the issues in the Guild trial been narrowed, from the point of view of the individuals affected, to a question of financial loss, but previous actions by the New York Newspaper Guild suggest the result which is certain to obtain in the present matter. In 1963, seven of the same individuals involved in the current Guild trial were arraigned by that union for crossing a picket line set up by the Printers Union. The decision of the Guild in that matter was that these same men "[S]hould be further subjected to a commensurately stiff fine. But in the spirit of leniency and in the hope of better understanding

in the future, the Board suspends the execution of the fine."

The Committee's Unique Position

We respectfully suggest to the Court that the Committee will be able to present a point of view that cannot adequately be offered by any of the parties or other possible intervenors. The Committee in a true sense is speaking with the voice of individuals who will be directly and personally affected by the Court's decision. These individuals have no "institutional" point of view to defend or advance.

In our view the heart of this case lies in the contradiction between compulsory unionism and individual freedom of conscience and action. Compulsory unionism is today a *contractual obligation* imposed upon individuals by agreement between management and labor organizations. Under the law as it now stands, individual employees or even groups of employees within a larger bargaining unit may have absolutely no say over whether *the company and the union* will agree to force them into union membership. Under other forms of union security an employee who has, at first joined voluntarily may be *forced by a contract between union and management* to continue his union membership against his will. Employees' freedom from compulsory union membership is an "appropriate subject" of collective bargaining, and when it suits an employer he may bargain away this freedom for some advantage which concerns him.

The complicated and precise legal steps which may be taken by an individual employee to reduce or circumscribe his membership obligations to a union once he is forced to "join" under a management union security provision are generally beyond the knowledge of the individual affected. Certainly, there are no organizations, including the N. L.

R. B., which are devoting either time or money to advising individual employees as to how they may withdraw from a union. It is true that the N. L. R. A. *permits* certain forms of union security; however, that same Act *guarantees* "Employees * * * the right to self organization, to * * * assist labor organizations * * * and * * * the right to refrain from any or all such activities." [Section 7.] It is ~~the~~ limits of that guarantee to the individual employees which the Court will examine in this case.

In this particular case, the Allis-Chalmers Company contends it is an unfair labor practice for the fines in question to be imposed; the company does nothing reprehensible in taking a position which coincides with its own interests. However, the interests which the Act protects are those of the *individual* employees, and we believe it would be most appropriate for the Court to hear directly from a group of them—a group of people who are not concerned with the competitive power balance between institutionalized management and institutionalized labor unions—who are only concerned with their own individual rights, which are, after all, the subject matter of both this case and the Act.

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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 216

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ALLIS-CHALMERS MANUFACTURING COMPANY AND INTERNATIONAL UNION, UAW-AFL-CIO (LOCALS 248 AND 401)

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals, sitting *en banc* (R. 96-123), is reported at 358 F. 2d 656.¹ The Board's decision and order (R. 13-24, 2-12) are reported at 149 NLRB 67.

JURISDICTION

The judgment of the court of appeals was entered on March 11, 1966 (R. 124-125). The petition for a writ of certiorari was filed on June 9, 1966, and

¹ The earlier opinion of a panel of the court, which was withdrawn, is set forth at R. 84-93.

granted on October 10, 1966 (R. 125). The jurisdiction of this Court rests on 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act (29 U.S.C. 160(e)).

QUESTION PRESENTED

Whether a union which fines a member for crossing a picket line established in support of a lawful strike authorized by a majority of the union's membership, and attempts to collect such fine by court action, thereby restrains or coerces an employee in the exercise of a right guaranteed by Section 7 of the National Labor Relations Act, in violation of Section 8(b)(1)(A) of the Act.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act (61 Stat. 136, 29 U.S.C. 151, *et seq.*), in addition to those set forth in the Appendix, *infra*, pp. 39-40, are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations * * * and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8(b). It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section

7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein * * *.

STATEMENT

Locals 248 and 401 of the United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, have, for many years, represented the production and maintenance employees of the respondent, Allis-Chalmers Manufacturing Company, at its plants in West Allis and LaCrosse, Wisconsin (R. 4-5, 14; 26).² The collective bargaining agreements contain a union security provision, which requires an employee to become and remain "a member of the Union * * * to the extent of paying his monthly dues and initiation fees, if any" (R. 26, 31, 34). Pursuant to this provision, all of the non-probationary employees in the bargaining units have been members of the Union at all times relevant to this proceeding (R. 5; 26, 31).

The UAW constitution provides a three-step procedure for calling a strike. First, a membership meeting of the local union is held to determine whether a formal strike vote shall be taken. Second, if a majority agrees to take a strike vote, the Local Union Executive Board notifies all the members, they are polled by secret ballot, and a strike is authorized if sanctioned by two-thirds of those voting. Third, the International Executive Board must approve the strike. (R. 38-41.) The UAW constitution further

²The Union intervened as a party in the court of appeals.

requires members to "support strike action" taken in accordance with the constitution (Art. 2, sec. 3; R. 35), and provides for sanctions for violation of this undertaking (see note 4, *infra*).

In 1959, and again in 1962, the Union called an economic strike against the Company in furtherance of new contract demands, and established picket lines in front of the Company's plants. Each strike was called in accordance with the foregoing procedure (R. 97, fn. *; 72-73). Although most of the employees in the bargaining unit joined the strikes and refused to cross the picket line, some ignored the line and went to work (R. 5-7, 14-15; 27, 29, 31, 32).*

After each strike, the Union charged the members who had crossed the picket line with violating the UAW constitution and bylaws, and, after formal adversary hearings before Union trial boards, found that they had engaged in "conduct unbecoming a Union member" and fined them in amounts varying from \$20 to \$100 (R. 5-7, 14-15; 27-30, 31-32, 42-54, 80-83).⁴ Some of the members paid the fines in

* In the 1959 strike, 175 employees out of a unit of 7,400 went to work at West Allis, and 2 employees went to work at La Crosse. In the 1962 strike, 30 out of a unit of 5,500 went to work at West Allis, and 4 out of 625 went to work at La Crosse (R. 14-15; 27, 29, 31, 32).

⁴ The UAW constitution (Art. 30, Sec. 10; R. 37) provides that, if a member is found to have violated the union's rules:

* * * the Trial Committee may, by a majority vote, reprimand the accused; or it may, by a two-thirds ($\frac{2}{3}$) vote, assess a fine not to exceed one hundred dollars (\$100) with automatic suspension, removal from office or expulsion in the event of the failure of the accused to pay the fine within a specified time; or it may, by a two-thirds ($\frac{2}{3}$) vote, suspend or remove the accused from office or

whole or in part but others refused to pay (R. 7; 30, 33). The Union commenced actions to collect the fines in the Wisconsin courts (R. 6-7; 28-29, 31).⁵ It made no effort to procure the discharge, or otherwise affect the employment status, of members who refused to pay the fines. None of the offending members has been expelled or suspended from the Union, nor have any resigned, for any reason relating to the disciplinary proceedings. (R. 7-8, 15; 30, 32.)

The Company filed charges with the Board alleging that the Union's assessment and attempted collection of the fines constituted restraint and coercion of the employees in the exercise of their right to refrain from participation in union activities, in violation of Section 8(b)(1)(A) of the National Labor Relations Act (R. 3-4). The Board (with Member Leedom dissenting) held that the conduct complained of did not violate that Section, and dismissed the complaint issued by the General Counsel (R. 13-24).

The Company petitioned the court below to review the Board's dismissal order. A panel of the court (Judges Kiley, Knoch and Castle) upheld the Board's decision (R. 84-93). Following a rehearing *en banc*, the court (with Chief Judge Hastings, and Judges Kiley and Swygert dissenting) withdrew its earlier opinion and held that the Union's action violated Sec-

suspend or expel him from membership in the International Union.

⁵ In a test suit brought against one member who refused to pay a fine, the Union obtained a judgment in the County Court of Milwaukee County, Wisconsin, which the Circuit Court of Milwaukee County affirmed. The opinion of the Circuit Court is set forth in Appendix B, *infra*. The case is pending before the Wisconsin Supreme Court. (R. 6-7.)

tion 8(b)(1)(A) of the Act (R. 96-123). The court accordingly set aside the Board's order dismissing the complaint, and remanded the case to the Board for further proceedings (R. 103).

ARGUMENT

I. INTRODUCTION AND SUMMARY

Section 8(b)(1)(A) of the National Labor Relations Act makes it an unfair labor practice for a union to "restrain or coerce" employees in the exercise of rights guaranteed by Section 7. Section 7 in turn guarantees to employees both the right to form, join or assist labor organizations and "the right to refrain from any or all such activities." A proviso to Section 8(b)(1)(A) preserves the right of a union "to prescribe its own rules with respect to the acquisition or retention of membership therein."

The court below held that it is an unfair labor practice under Section 8(b)(1)(A) for a union to fine members for crossing the union's picket line during a strike and to attempt to recover such fines by court action. The court reached that conclusion although, so far as appears from the record, (1) the strike was lawful and was duly authorized by a majority of the union's members; (2) each of the members who were fined had sworn to comply with the rules and regulations of the union (R. 38, 59, 61) and thus "to support strike action" (R. 35); and (3) no defect in the union

The suggestion in the Company's Brief in Opposition (pp. 3, 7) that there was some unspecified impropriety in the procedure by which the strikes were called has no basis in the record and was rejected by the court of appeals (R. 97, fn.).

procedures leading to the imposition of the fines was alleged. The court below proceeded on the premise that "[t]he statutes in question present no ambiguities whatsoever" and that "a literal reading would require reversal of the Board's Order" dismissing the complaint (R. 101). Yet, as Judge Learned Hand taught long ago, "[t]here is no surer way to misread any document than to read it literally." *Guiseppe v. Walling*, 144 F. 2d 608, 624 (C.A. 2) (concurring opinion), affirmed *sub nom. Gemsco v. Walling*, 324 U.S. 244. Given the complex legislative and judicial history of the act in question, such literalism seems a peculiarly blunt tool.

The legislative history is considered in detail below (*infra* pp. 15-29). In the first instance, however, it should be noted that the decision below represents a sharp break with the common understanding of the Board and the courts as to the legitimate scope of union disciplinary powers. From the outset the Board has held that Section 8(b)(1)(A) does not prohibit union disciplinary sanctions that are neither tinged with violence nor directed at employment status and which seek to compel union members to comply with reasonable and legitimate union policies. *Minneapolis Star and Tribune Co.*, 109 NLRB 727, 738; *Int'l Typographical Union (American Newspaper Publishers Ass'n)*, 86 NLRB 951, 956-957, 1022-1023.¹ That interpretation, articulated

¹ See also *Local 283, Auto Workers (Wisconsin Motor Corp.)*, 145 NLRB 1097; *Bay Counties District Council of Carpenters (Associated Home Builders)*, 145 NLRB 1775, remanded for further proceedings, 352 F. 2d 745 (C.A. 9); *United Steelworkers, Local No. 4028 (Pittsburgh-Des Moines Steel Co.)*, 154 NLRB

shortly after the passage of the Taft-Hartley Act, is entitled to substantial weight because it constitutes "a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new."

Norwegian Nitrogen Products Co. v. United States, 288 U.S. 294, 315.⁸ The courts likewise have heretofore found no statutory bar to the use of legitimate sanctions in the enforcement of reasonable union rules.

National Labor Relations Board v. Amalgamated Local 286, 222 F. 2d 95 (C.A. 7); *American Newspaper Publishers Ass'n v. National Labor Relations Board*, 193 F. 2d 782, 800 (C.A. 7); *Parks v. I.B.E.W.*, 314 F. 2d 886 (C.A. 4), certiorari denied, 372 U.S. 976; *National Labor Relations Board v. UAW*, 320 F. 2d 12 (C.A. 1); cf. *Machinists v. Gonzales*, 356 U.S. 617, 620.

692. Cf. *Local 138, Operating Engineers (Charles S. Skura)*, 148 NLRB 679; *H. B. Roberts, Business Manager of Local 925, Operating Engineers (Wellman-Lord Engineering, Inc.)*, 148 NLRB 674, enforced *sub nom. Roberts v. National Labor Relations Board*, 350 F. 2d 427 (C.A.D.C.); *Cannery Workers Union (Van Camp Seafood Co.)*, 159 NLRB No. 47.

⁸ To be sure, the Board has recognized that "a fine is by nature coercive". *Local 138, Operating Engineers*, 148 NLRB 679, 682. The Board has held that the use of such coercive power to secure the compliance of members with rules outside the union's competence violates Section 8(b)(1)(A). *Ibid*; see n. 24, p. 33, *infra*. Moreover, a fine may not be collected by applying union dues collected under a union security agreement and thereafter threatening job loss for nonpayment of dues, since Section 8(b)(2) makes it quite clear that employment status must not be used as a means of enforcing union discipline. See *infra*, pp. 16-27, and *Associated Home Builders of the Greater East Bay*, 145 NLRB 1775, 1776, remanded, 352 F. 2d 745.

While we recognize that the scope of permissible union action under Section 8(b)(1)(A) is subject to continuing judicial reexamination, at least at its periphery,^{*} we deal here with a rule going to the heart of a union's being. As the Board observed (R. 16): "We cannot conceive of a subject which would be more within its competence" than "a rule prohibiting members from crossing a picket line," for such a rule "involves the loyalty of its members during a time of crisis for the union." And in fact rules requiring membership loyalty under such circumstances are to be found in the constitutions of a very large number of unions. See United States Bureau of Labor Statistics, Department of Labor, Bulletin No. 1350, *Disciplinary Powers and Procedures in Union Constitutions* 28, Table III-3 (1963); Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049, 1066 (1951). In short, one must approach the decision below with the recognition that it proscribes a widespread, if not universal, practice of unions which has been sanctioned by the courts and the Board over a long period of time.

Furthermore, in assessing the result reached below, it is relevant to consider its practical significance for responsible, democratic and effective unionism and, hence, for the functioning of the entire structure of collective bargaining established under federal labor law. There can be no doubt that the Taft-Hartley

^{*} Compare *Local No. 12, United Rubber Workers v. National Labor Relations Board* (C.A. 5), decided November 9, 1966, 63 LRRM 2395, with *National Labor Relations Board v. Miranda Fuel Co.*, 326 F. 2d (C.A. 2). See also brief for the United States as *Amicus Curiae* in *Vaca v. Sipes*, No. 114, this Term.

Act was designed to improve and not to abolish the union's role in effectuating the congressional program for the promotion of "industrial stabilization through the collective bargaining agreement." *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578. While seeking to restrain a variety of union abuses, the Act preserved the right of employees "to self-organization, * * *" to bargain collectively through representatives of their own choosing, and to engage in other concerted activities * * *" (Section 7). The unions established through the exercise of those rights bear substantial statutory and contractual responsibilities, not only to their members, but to non-member employees within the bargaining unit and to employers as well. Moreover, a properly selected bargaining agent has significant powers, commensurate with its responsibilities. See *Humphrey v. Moore*, 375 U.S. 335, 342, 349; *Mastro Plastics Corp. v. National Labor Relations Board*, 350 U.S. 270, 280.

Implicit in these processes of industrial self-government, as in other forms of concerted, associational activity, is the principle of majority rule. As this Court has recognized, "[c]onflict between employees represented by the same union is a recurring fact" (*Humphrey v. Moore*, 375 U.S. at 349-350); "[t]he complete satisfaction of all who are represented is hardly to be expected" (*Ford Motor Co. v. Huffman*, 345 U.S. 330, 338). That the majority choice should prevail, within the area of union competence, is both the source of the union's legitimacy and the only democratic method of achieving effective concerted action. The elaborate, time consuming and expensive procedures for balloting on a wide variety

of union matters would be remarkably pointless if Section 7 left each participant free to disregard the outcome. Cf. *Brooks v. National Labor Relations Board*, 348 U.S. 96; National Labor Relations Act Section 9(c)(3), 29 U.S.C. 159(c)(3). In selecting the bargaining agent, in electing officers, in approving bargaining agreements, all are bound by the majority decision. The important rights to self-organization and concerted action would be largely meaningless on any other terms. On its face, therefore, it seems inherently implausible that, in giving statutory recognition to an employee's right to refrain from engaging in concerted activity, Congress intended to proscribe the principle of majority rule for labor unions. Yet that is the practical effect of the decision below, since it holds that adherence to the majority decision may not be required.

A much more plausible interpretation of the statutory language was vigorously urged by the dissenting judges below (R. 104-123). Section 7 may properly be read to give each employee a free choice: He may elect to abstain from union affairs, in which case his only obligation under a union security clause is to pay union dues and fees. See *National Labor Relations Board v. General Motors Corp.*, 373 U.S. 734. Alternatively, he may elect to participate in concerted union activities, in which case he assumes the benefits and burdens such participation reasonably entails. But Section 7 affords no right to do both at once. See *National Labor Relations Board v. UAW*, 320 F.2d 12 (C.A. 1). As Chief Judge Hastings wrote in dissent (R. 105), Section 7 does not provide that "an employee

who is a union member may claim the * * * right of self-organization for collective bargaining purposes and at the same time claim the right to belong to the labor organization on his own terms" (emphasis in original). Section 7 protects a free choice; it does not withhold the consequences of choosing. Nothing in the Act or the legislative history requires the conclusion that Congress intended to steer a self-defeating course.

Finally, the court below reached this anomalous result not in some area of minor or peripheral concern, but with respect to a strike vote. There can be no doubt that the strike, or the threat of strike, is a union's ultimate weapon and the principal source of its bargaining power. Furthermore, in no other area of union concern is concerted action—i.e., united action—more significant. One man cannot strike; only groups of men united for action can strike in any meaningful sense. The union member who works while his fellow members are on strike commits the gravest offense against his union. Since union members are no more likely to be unanimous in their views of the wisdom of a strike than in other matters, it seems reasonable that they may agree in advance to abide by the majority vote and to the imposition of sanctions for non-compliance. Indeed, the capacity to so agree would appear to be essential to the right to strike, for it seems inconceivable that a union may conduct a strike only as and when each individual member chooses to participate. Yet the decision below holds that the right under Section 7 either to engage in or refrain from concerted activities unambiguously proscribes a union from insisting that its

members comply with a strike vote. The result is inconsistent with the settled rule that, when a union decides not to strike or enters into a no-strike agreement, a dissident minority is not free by virtue of its Section 7 rights to ignore that decision and strike on its own. *National Labor Relations Board v. Draper Corp.*, 145 F. 2d 199 (C.A. 4); *Parks v. I.B.E.W.*, 314 F. 2d 886 (C.A. 4), certiorari denied, 372 U.S. 976; cf. *National Labor Relations Board v. Sands Mfg. Co.*, 306 U.S. 332. "Disciplining wildcat strikers may not only be a power but a positive duty of the union."

Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049, 1065 (1951).

The court of appeals did not even advert to Section 13 of the Act which provides that nothing therein "except as specifically provided for * * * shall be construed so as either to interfere with or impede or diminish in any way the right to strike * * * ." This Court has characterized Section 13 as a "command of Congress to the courts to resolve doubts and ambiguities in favor of an interpretation of § 8 (b)(1)(A) which safeguards the right to strike as understood prior to the passage of the Taft-Hartley Act." *National Labor Relations Board v. Drivers Local 639 (Curtis Bros.)*, 362 U.S. 274, 282. This command the court of appeals failed to heed.

We show below (*infra*, pp. 15-27) that the legislative history of the Taft-Hartley Act discloses no congressional purpose to prohibit unions from disciplining members by such means as fines, suspension or expulsion for violating reasonable union rules. On the contrary, that history indicates that Congress was

primarily concerned with a limited class of coercive union practices—notably, violence and threats of job loss—and that it had no intention to intrude on the maintenance of internal union discipline by legitimate means in support of legitimate union objectives, especially in light of the prohibition of the closed shop and the compulsory unionism it had entailed. We also show (*infra*, pp. 28–29) that this understanding of the congressional purpose is supported by its rational consistency with the Labor-Management Reporting and Disclosure Act of 1959. Although the 1959 statute, unlike the Taft-Hartley Act, was expressly directed at the protection of the union members in the internal procedures of their unions, it explicitly recognized that a union member may be fined under proper procedural safeguards (Section 101(a)(5), 29 U.S.C. 411(a)(5)). Moreover, it disclaimed any intent “* * * to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution * * *” (Section 101(a)(2), 29 U.S.C. 411(a)(2)).

Furthermore, we point out (*infra*, pp. 29–35) that a fine, fairly imposed and collected through judicial proceedings, is not an impermissible sanction under Section 8(b)(1)(A), and that securing membership compliance with a strike is not an impermissible objective. Some fines—*e.g.* those imposed on wildcat strikers—are clearly proper, if indeed not required. Resort to court action to collect a fairly imposed fine is the very antithesis of strong-arm tactics and similar methods that Congress sought

to proscribe. Moreover, the fines involved here were imposed for violation of a voluntarily assumed duty of union members who had sworn to comply with union rules and to support lawful strike action. Finally, we urge (*infra*, pp. 35-38) that the Union's action did not violate Section 8(b)(1)(A) because no right protected by Section 7 was involved. Having voluntarily undertaken the burden and benefits of participation in the affairs of the union, the members had exercised their Section 7 right to engage in concerted activities and could not simultaneously claim a protected right to refrain from such participation.

II. CONGRESS DID NOT INTEND TO PROHIBIT UNIONS FROM DISCIPLINING UNION MEMBERS BY SUCH MEANS AS FINES, SUSPENSION OR EXPULSION FOR VIOLATING REASONABLE UNION RULES

Since a union's imposition, and attempted collection by court action, of a fine for failure to adhere to a union policy tend, in a literal sense, to restrain or coerce union members (who are also employees) to assist the union, the court below concluded that such action was proscribed by Section 8(b)(1)(A). But *National Labor Relations Board v. Drivers Local No. 639 (Curtis Bros.)*, 362 U.S. 274, teaches that Section 8(b)(1)(A) cannot be read literally to cover all union action which tends to restrain or coerce employees in the exercise of their Section 7 rights.¹⁰

¹⁰ In *Curtis*, the Court held that Section 8(b)(1)(A) did not reach peaceful picketing by a minority union to secure exclusive recognition, notwithstanding that such picketing tended, in a literal sense, to restrain or coerce the employees to forgo their Section 7 right to refrain from selecting a union representative.

Curtis also cautions against "finding by construction a broad policy" in what the Court termed "the non-specific, indeed vague, words, 'restrain or coerce'" (*id.* at 290). The legislative history of Section 8(b)(1)(A), read in the context of the contemporaneous and subsequent amendments to the labor law, reveals no congressional purpose which would support the broad and novel construction reached by the court below. On the contrary, we show that the legislative history of the Taft-Hartley Act and the 1959 amendments reveal that Congress did not intend to preclude a union from disciplining its members—by such traditional means as fines, suspension, or expulsion—for violating reasonable union rules and policies.

A. IN AMENDING THE UNION SECURITY PROVISIO TO SECTION 8(a)(3) AND ADDING THE SECTION 8(b)(2) BAN AGAINST UNION DISCRIMINATION, CONGRESS PROSCRIBED COMPULSORY UNIONISM AND DREW A CAREFUL LINE BETWEEN UNION DISCIPLINE WHICH AFFECTED A MEMBER'S JOB RIGHTS AND THAT WHICH DID NOT

The 1947 Taft-Hartley Act is essentially the Senate bill (S. 1126), which Senators Taft and Ball sponsored. The bill as reported by the Senate Labor Committee did not contain Section 8(b)(1)(A), which was added on the floor of the Senate. The Committee bill did, however, amend the proviso to Section 8(a)(3) so as to outlaw the closed shop, and added Section 8(b)(2), which made it unlawful for a union to discriminate or to cause discrimination against an employee (these provisions are set forth in the Appendix, *infra*, pp. 39-40, and are discussed more fully below). Since the debate on these changes involved a discussion of union discipline, and since it occurred while

Congress was considering Section 8(b)(1)(A),¹¹ such debate sheds helpful light on the intended scope of Section 8(b)(1)(A).

In amending Section 8(a)(3) so as to outlaw agreements conditioning employment on union membership (the closed shop) while permitting agreements under which employees were required to become and remain members of the union after a 30-day period (the union shop), Congress provided:

That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

As a corollary, Section 8(b)(2) made it an unfair labor practice for a union "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership

¹¹ Section 8(b)(1)(A) was introduced on the floor of the Senate on April 25, 1947, and was discussed that day. On April 29, the union shop and Section 8(b)(2) amendments were discussed. On April 30, the discussion of Section 8(b)(1)(A) resumed and continued until May 2, when the Senate adopted the provision. 93 Cong. Rec. 4016, 4191, 4270, 4442; 2 Leg. Hist. 1018, 1094, 1138, 1217.

"Leg. Hist." refers to the two-volume Legislative History of the Labor Management Relations Act, 1947 (G.P.O., 1948).

in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

Respecting these amendments, the Senate Report stated (S. Rep. No. 105, 80th Cong., 1st Sess. 20, 1 Leg. Hist. 426, emphasis added):

The committee did not desire to limit the labor organization with respect to either its selection of membership or expulsion therefrom. But the committee did wish to *protect the employee in his job* if unreasonably expelled or denied membership. The tests provided by the amendment are based upon facts readily ascertainable and *do not require the employer to inquire into the internal affairs of the union.*

The report added (S. Rep. No. 105, *op. cit.*, 21, 1 Leg. Hist. 427, emphasis added):

It is to be observed that unions are free to adopt whatever membership provisions they desire, but that they may not rely upon action taken pursuant to those provisions *in effecting the discharge of, or other job discrimination against,* an employee except in the two situations described. Thus, an employee even though he loses his union membership for reasons other than those set forth, may not be deprived of his job because of a contract requiring membership as a condition of employment. Discrimination is permitted only if he has failed to tender dues and initiation fees * * *¹²

¹² The Senate bill also provided that the employee could be discharged if he "has engaged in 'dual union' activity or activity designed to oust the incumbent union as exclusive representative,

On the floor of the Senate, Senator Pepper protested that these amendments would deprive the union of power to protect itself against company spies in its ranks, wildcat strikers, and those who opposed what the majority of the members believed was in the union's best interest (93 Cong. Rec. 4191, 2 Leg. Hist. 1094). He added (93 Cong. Rec. 4193, 2 Leg. Hist. 1097):

* * * we do not have to intervene, by means of this legislation, into this internal affair of a union and deny it the right to protect itself against a man in the union who betrays the objectives of the union, who violates, perhaps, the constitution of the union or the bylaws of the union, and is convicted by his peers and fellow members of having an antiunion and antisocial attitude toward the workers in that organization.

Senator Taft answered (*ibid.*, emphasis added):

The pending measure *does not propose any limitation with respect to the internal affairs of unions*. They still will be able to fire any members they wish to fire, and they still will be able to try any of their members. All that they will not be able to do, after the enactment of this bill, is this: If they fire a member for some reason other than nonpayment of dues they cannot make his employer discharge him from his job and throw him out of work. That

at an inappropriate time." S. Rep. No. 105, *op. cit.*, 21, 1 Leg. Hist. 427. This provision was omitted in Conference on the ground that it was "unnecessary since there is nothing in the conference agreement which permits an employer to discriminate against an employee who has been expelled for this reason." H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 44, 1 Leg. Hist. 548.

is the only result of the provision under discussion.

In sum, in abolishing the closed shop and in making it an unfair labor practice for a union, no less than an employer, to discriminate against an employee so as to encourage or discourage union membership, Congress indicated that its policy was "to insulate employees' jobs from their organizational rights" (*Radio Officers' Union v. National Labor Relations Board*, 347 U.S. 17, 40). That is, impressed with the argument that employees were not entitled to be "free riders," it permitted union security agreements and provided that thereunder the union could cause an employee to be fired for failure to pay regular dues and initiation fees; but it permitted no other union rule or membership obligation to be enforced by means that affect the employee's employment status. At the same time, Congress refrained from precluding the union from enforcing such rules or membership obligations by other means which did not affect job rights.¹³ Fur-

¹³ A study of union disciplinary powers and procedures published shortly after the enactment of the Taft-Hartley Act found that:

Two-thirds of the unions have provisions exercising some degree of discipline over a member's conduct on the job: 59 prohibit working on a job while a strike is in progress; 31 punish work stoppages in violation of agreement; 15 bar the making of individual contracts with the employer; and 11 prohibit members from working with nonmembers. * * * [Summers, *Disciplinary Powers of Unions*, 3 Ind. Lab. Rel. Rev. 483, 495 (1950).]

The three typical sanctions for enforcing such rules were fines, suspension for a limited period, and expulsion from membership; and "the most common form of penalty is the fine." Summers, *Disciplinary Procedures of Unions*, 4 Ind. Lab. Rel. Rev. 15, 26 (1950).

thermore, since under Section 8(a)(3) "[m]embership' as a condition of employment is whittled down to its financial core" (*National Labor Relations Board v. General Motors Corp.*, 373 U.S. 734, 742), the assumption of any burdens or obligations of union membership beyond the payment of dues and fees becomes an essentially voluntary matter for each employee. Section 8(b)(1)(A) must be interpreted in light of the elimination of all compulsion to join unions except to the extent of paying dues and fees.

B. SECTION 8(b)(1)(A) WAS AIMED PRIMARILY AT VIOLENCE AND THREATS OF JOB LOSS, PRINCIPALLY IN ORGANIZING CAMPAIGNS

It is not reasonable to assume that Congress, after carefully avoiding, in amending Section 8(a)(3) and adding Section 8(b)(2), limitations on a union's efforts to discipline its members by means that do not affect job rights, made a sweeping departure from that principle in enacting Section 8(b)(1)(A)—a provision which was considered in the midst of the debate on the 8(a)(3) and 8(b)(2) amendments (see n. 11, *supra*, p. 17). The legislative history of Section 8(b)(1)(A) suggests that there was no such intention, that Congress was directing its attention to a relatively limited class of abuses, and that it had no general intent to deprive the union of power to discipline its members for violating reasonable union rules and policies by such traditional means as fines, suspension, or expulsion.

Thus, five members of the Senate Committee, including Senators Taft and Ball, criticized the omis-

sion from the Senate bill of a provision dealing with certain coercive union practices. They stated (S. Rep. No. 105, Supplemental Views, 80th Cong., 1st Sess. 50, 1 Leg. Hist. 456):

The committee heard many instances of union coercion of employees such as that brought about by threats of reprisal against employees and their families in the course of organizing campaigns; also direct interference by mass picketing and other violence. Some of these acts are illegal under State law, but we see no reason why they should not also constitute unfair labor practices to be investigated by the National Labor Relations Board, and at least deprive the violators of any protection furnished by the Wagner Act. * * *

When Section 8(b)(1)(A) was later introduced on the floor of the Senate, Senator Taft explained (93 Cong. Rec. 4021, 2 Leg. Hist. 1025):

An employer cannot go to an employee and say, "If you join this union you will be discharged." He cannot go to an employee and threaten physical violence. * * * Now it is proposed that the union be bound in the same way. * * * Why should a union be able to go to an employee and threaten violence if he does not join the union? Why should a union be able to say to an employee, "If you do not join this union we will see that you cannot work in the plant"? * * * There have been many cases in which unions have threatened men or their wives. They have called on them on the telephone and insisted that they sign bargaining cards. They have said to them, "Sooner

or later we are going to organize this plant with a closed shop, and you will be out" * * * ¹⁴

Senator Ives inquired whether the provisions in the bill "pertaining to the union shop and the regulation and control of employment under the union shop" would not check these practices (93 Cong. Rec. 4021, 2 Leg. Hist. 1025). Senator Taft replied that those provisions were not adequate since many unions did not have union security agreements and in many cases the union coercion occurred before a representative was even selected (93 Cong. Rec. 4021, 2 Leg. Hist. 1025-1026).

The debate on Section 8(b)(1)(A) was then suspended for several days, while the union shop amendment and Section 8(b)(2), *inter alia*, were discussed (see pp. 16-21, *supra*). When the Senate returned to Section 8(b)(1)(A), Senator Holland proposed that a proviso be added to Section 8(b)(1)(A), reading (93 Cong. Rec. 4272, 2 Leg. Hist. 1141):

Provided, That this subsection shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

Senator Ball readily accepted it, stating (*ibid.*):

It was never the intention of the sponsors of the pending amendment to interfere with the internal affairs or organization of unions. The amendment of the Senator from Florida makes that perfectly clear. * * *

¹⁴ See also 93 Cong. Rec. 4016-4017, 2 Leg. Hist. 1018-1021 (Senator Ball).

Senator Morse thereupon attacked Section 8(b)(1)(A) on the ground that, insofar as it was directed at violence and related conduct, local laws were sufficient to deal with such conduct; and, insofar as it was directed against union threats of economic reprisal, the union shop and union discrimination amendments would take care of the problem. He added that the provision would have the effect of outlawing organizational and recognition strikes. 93 Cong. Rec. 4428-4431, 2 Leg. Hist. 1191-1197.

Senator Ball, referring to the proviso, which had just been adopted, stated (93 Cong. Rec. 4433, 2 Leg. Hist. 1200):

That modification is designed to make it clear that we are not trying to interfere with the internal affairs of a union which is already organized. All we are trying to cover is the coercive and restraining acts of the union in its effort to organize unorganized employees. * * *

He added (93 Cong. Rec. 4434, 2 Leg. Hist. 1202):

What we are talking about is threats of violence or of reprisal and that sort of thing in an organizational campaign, or perhaps in an organizational strike * * *. A mass picket line certainly would be coercion and restraint in this picture.

Similarly, Senator Taft asserted that there was no intention to interfere with peaceful picketing or other legitimate organizing activity. 93 Cong. Rec. 4436-4437, 2 Leg. Hist. 1206-1208. He gave the following illustrations of the type of conduct sought to be reached under Section 8(b)(1)(A) (93 Cong. Rec. 4435-4436, 2 Leg. Hist. 1205):

In the case of unions, in the first place, there might be a threat that if a man did not join, the union would raise the initiation fee to \$300, and he would have to pay \$300 to get in; or there might be a threat that if he did not join, the union would get a closed-shop agreement and keep him from working at all. Then, there might be a threat of beating up his family or himself if he did not join and sign a card. I think * * * there might be the actually violent act of forcibly, by mass picketing, preventing a man from working.

In short, as this Court pointed out in *Curtis, supra*, the "note repeatedly sounded" by Congress, in enacting Section 8(b)(1)(A), was "the necessity for protecting individual workers from union organizational tactics tinged with violence, duress or reprisal" (362 U.S. at 286).¹⁵ To be sure, Congress also intended to pro-

¹⁵ The threats of reprisal which Congress sought to prohibit included "particularized threats of economic reprisal" (*Curtis, supra*, 362 U.S. at 287). However, the examples given make it clear that the legislators were referring principally to threats of job loss or other adverse effects on employment status. See e.g., 93 Cong. Rec. 4021, 4024, 4435-4436; 2 Leg. Hist. 1025, 1031, 1205-1206 (Senator Taft). It is not readily to be supposed that the familiar "fine," though never mentioned, was implied by the phrase "economical reprisal."

We recognize that Section 8(b)(1)(A) has also been held to prohibit other forms of non-violent union action. See *Ladies' Garment Workers' Union v. National Labor Relations Board*, 366 U.S. 731 (union violated Section 8(b)(1)(A) by entering into an exclusive recognition agreement with the employer at a time when it represented only a minority of the employees); *Local Union No. 12, United Rubber Workers v. National Labor Relations Board* (C.A. 5), decided November 9, 1966, 63 LRRM 2395 (union violated Section 8(b)(1)(A) by refusing to process grievances because of the employees' race); *Roberts v. National Labor Relations*

scribe violence, mass picketing, and threats of job loss even when they were engaged in outside of an organizing campaign and were directed against employees who were already union members. However, there is no persuasive evidence that Congress intended to regulate the relationship between the union and its members so as to bar the union from disciplining its members, by such traditional and peaceful means as fines, suspension, or expulsion, for violating reasonable union rules and policies.¹⁸ On the contrary, in

Board, 350 F. 2d 427 (C.A.D.C.) (union violated Section 8(b)(1)(A) by fining a member for filing unfair labor practice charges with the Board, discussed *infra*, n. 25, p. 33). But, in each of these cases, the union's conduct was found illegal because it went beyond the area of legitimate union competence. These cases hold that otherwise legitimate means may be deemed violations of Section 8(b)(1)(A) when infected by ends that lie beyond the pale of legitimate union objectives. See Cox, *The Role of Law in Preserving Union Democracy*, 72 Harv. L. Rev. 609, 617 (1959). The prevention of strike-breaking by union members who have sworn to support strike activity clearly does not fall in the class of forbidden objectives. See, *infra*, pp. 33-37.

¹⁸ When Section 8(b)(1)(A) was first introduced, Senator Taft, in response to Senator Pepper's contention that the relation between a union and its members was different from that of an employer and his employees, asserted that the provision was intended to protect union members against the arbitrary powers exercised by some union leaders. 93 Cong. Rec. 4023, 2 Leg. Hist. 1027-1028. However, when Senator Pepper continued to press the point, Senator Taft shifted ground and emphasized that "the amendment protects men who may not be members of unions at all." He proceeded to give examples of threats of job loss and of physical violence. 93 Cong. Rec. 4023-4024, 2 Leg. Hist. 1028-1031. Senator Taft did not thereafter again suggest that Section 8(b)(1)(A) was intended to govern the relation between the union and its members. Indeed, in the debate on the union shop and Section 8(b)

adopting the proviso to Section 8(b)(1)(A) and the union shop and Section 8(b)(2) amendments, Congress made it clear that it had no such intention.¹⁷

(2) amendments, which followed the above colloquy with Senator Pepper, Senator Taft gave specific assurance that the bill "does not propose any limitation with respect to the internal affairs of unions" (*supra*, p. 19). Moreover, the proviso to Section 8(b)(1)(A) (*supra*, p. 23) was adopted after the Pepper-Taft colloquy.

The statement of Senator Wiley—that there are "instances in which unions * * * have imposed fines upon their members up to \$20,000 because they crossed picket lines—dared to go to the place of employment" (93 Cong. Rec. 5000; 2 Leg. Hist. 1471)—likewise does not establish that, under Section 8(b)(1)(A), Congress intended to bar the union from fining its members for breach of reasonable union rules. Senator Wiley was not one of the sponsors of Section 8(b)(1)(A), his remarks occurred after Section 8(b)(1)(A) had been debated and adopted, and they were not even specifically directed to that provision.

Finally, Senator Taft explained that the right to refrain was added to Section 7 to "make the prohibition contained in section 8(b)(1) apply to coercive acts of unions against employees who did not wish to join or did not care to participate in a strike or a picket line" (93 Cong. Rec. 6859, 2 Leg. Hist. 1623). However, there is nothing in this statement which indicates that, by the phrase "coercive acts of unions," Senator Taft intended to encompass such traditional and legitimate union disciplinary measures as a fine for refusing to support a lawful strike called by a majority of the members. On the contrary, in view of the earlier references in the legislative debates to violence, mass picketing, and threats of job loss, it is reasonable to conclude that Senator Taft was referring only to that kind of union conduct.

¹⁷ The amendments finally adopted are in sharp contrast to those proposed in the House bill. H.R. 3020, as it passed the House, made it an unfair labor practice for a labor organization "to fine or discriminate against any member, or subject him to any discipline or penalty, on account of his having" criticized the organization or its officers, supported or failed

"C. THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959 CONFIRMS THE LIMITED SCOPE OF SECTION 8(b)(1)(A)

The Labor-Management Reporting and Disclosure Act, enacted in 1959, confirms the foregoing interpretation of the limited scope of Section 8(b)(1)(A).¹⁸ Although the 1959 statute, unlike the Taft-Hartley Act, was explicitly directed at the regulation of internal union affairs and provides a "bill of rights" for union members, Congress recognized (Section 101(a)(5), 29 U.S.C. 411(a)(5)) that a union member "may be fined, suspended, expelled, or otherwise disciplined" provided that certain procedural safeguards are observed. It thereby indicated its own understanding that the 1947 Act had not proscribed the fine as a legitimate method of securing the compliance of members with reasonable union rules. Moreover, Congress added a proviso (Section 101(a)(2), 29 U.S.C. 411(a)(2)) disclaiming any intent "* * * to impair the right of a labor organization to adopt and enforce reasonable

to support any candidate for civil or union office, or "supported or failed to support any proposition submitted to the labor organization, or to citizens generally, for a vote" (Sec. 8(c)(5), 1 Leg. Hist. 180). Another provision made it an unfair labor practice for a labor organization "to expel or suspend any member without affording him an opportunity to be heard, or on any ground other than (A) nonpayment of dues [and five other grounds]" (Sec. 8(c)(6), 1 Leg. Hist. 181). The Conference Committee rejected these provisions and adopted the Senate bill. H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 42, 44; 1 Leg. Hist. 546, 548.

¹⁸ In *Curtis* (362 U.S. at 291) the Court observed: "To be sure, what Congress did in 1959 does not establish what it meant in 1947. However, as another major step in an evolving pattern of regulation of union conduct, the 1959 Act is a relevant consideration."

rules as to the responsibility of every member toward the organization as an institution * * * .” It is hardly likely that Congress would have adopted these provisions, allowing the enforcement of reasonable union rules, had it flatly interdicted union fines under Section 8(b)(1)(A) 12 years earlier.

III. SECTION 8(b)(1)(A) DOES NOT PROHIBIT A UNION FROM FINING A MEMBER WHO HAS VOLUNTARILY SUBSCRIBED TO UNION OBLIGATIONS FOR REFUSING TO SUPPORT A LAWFUL STRIKE

A. THE UNION'S IMPOSITION OF A FINE, AND JUDICIAL ACTION TO COLLECT IT, IS NOT A FORBIDDEN SANCTION

As we have noted above, the legislative history of Section 8(b)(1)(A) demonstrates a congressional belief that there are some kinds of union pressure to which employees should under no circumstances be subjected—however reasonable or unreasonable the union's objectives. In particular, Congress focused on strong-arm tactics and threats of job loss as impermissible means to any end. We recognize, of course, that the phrase “restraint or coercion” draws only a hazy boundary between the permissible and the impermissible. But a relatively small fine, imposed through a procedure of unquestioned fairness and collected through civil action in a state court, is the very antithesis of the type of tactics Congress intended to prohibit.

Moreover, it is clear that some fines at least are permissible even though they are undoubtedly “coercive” and designedly so. Thus, a union may fine members who violate a no-strike vote or no-strike clause (see, *supra*, p. 13). Of course, even properly

imposed fines can be collected in ways that run afoul of Section 8(b)(1)(A) (see *supra*, p. 8, n. 8). But the collection of fines from recalcitrant members by civil action in no way affects job rights and surely bears no similarity whatever to strong-arm tactics. An otherwise legitimate fine does not become illegal because the union invokes the peaceable, fair and orderly processes of a state court to collect it.^{18a}

If the Union had attempted to prevent the defecting members from crossing the picket line by threatening them with physical harm or with a loss in employment benefits (after the strike ended), the Union would have violated Section 8(b)(1)(A).¹⁹ On the other hand, the court of appeals recognized (R. 98) and the Company conceded (Brief in the court of appeals, pp. 26-27) that, under the Act, the Union could expel the offending members. Indeed, the proviso to Section 8(b)(1)(A) so recognizes, since it states that that section "shall not impair the right of a labor organiza-

^{18a} See *Auto Workers, Local 756 v. Woychik*, 5 Wis. 2d 528, 93 N.W. 2d 336; *Master Stevedores' Assn. v. Walsh*, 2 Daly 1 (N.Y. 1867).

¹⁹ As shown, Congress intended to protect union members, no less than other employees, from these tactics (*supra*, pp. 25-26). See also *Progressive Mine Workers v. National Labor Relations Board*, 187 F. 2d 298 (C.A. 7); *National Labor Relations Board v. Bell Aircraft Co.*, 206 F. 2d 235 (C.A. 2); *Painters' District Council No. 6 (Higbee Co.)*, 97 NLRB 654, 660-661, enforced, 202 F. 2d 957 (C.A. 6), certiorari denied, 345 U.S. 995; *Fox Midwest Amusement Corp.*, 98 NLRB 699, 718, 719; *Minneapolis Star and Tribune Co.*, 109 NLRB 727, 728-729; cf. *National Labor Relations Board v. Local 169, Teamsters*, 228 F. 2d 425, 430 (C.A. 3).

The Union here made no effort to procure the discharge, or otherwise affect the employment status, of members who refused to pay the fines (*supra*, p. 5). Nor did it threaten those members with physical harm.

tion to prescribe its own rules with respect to the * * * retention of membership therein * * *

We submit that no rational purpose would be served by permitting expulsion but prohibiting fines. The use of fines as a disciplinary device finds widespread recognition in union constitutions,²⁰ as well as in Section 101(a)(5) of the Labor-Management Reporting and Disclosure Act (see, *supra*, p. 28). According to one study of union disciplinary proceedings, "the most common form of penalty is the fine."²¹ Furthermore, expulsion is commonly regarded as a more severe sanction than a fine. Expulsion will generally entail forfeiture of significant union insurance, pension and welfare benefits, as well as disenfranchisement and exclusion from the councils of the collective bargaining agent.²² Moreover, a fine, if not paid, is often the basis for expulsion (see the UAW Constitution, p. 4, n. 4, *supra*). Under the circumstances, Congress could not have intended to permit the Union to expel members who refused to respect the picket line, but not to fine them.²³

²⁰ See Summers, *Disciplinary Procedures of Unions*, 4 Ind. Lab. Rel. Rev. 15, 26.

²¹ Summers, *op. cit.*, *supra*.

²² *Id.*, at 28-29; see Cox, *The Role of Law in Preserving Union Democracy*, 72 Harv. L. Rev. 609, 612, 622-623 (1959).

²³ A congressional intention to permit a union to expel an employee from membership, but not to fine him, may not be inferred from the fact that the proviso speaks only of "rules with respect to the acquisition or retention of membership." The rule that a union member must support a strike called by the union certainly has a bearing on the "retention" of membership, for, as shown above, a fine for violating that rule could serve as a basis for expulsion. In any event, the proviso was merely intended to emphasize that Section 8(b)

B. SECURING MEMBERSHIP COMPLIANCE WITH A STRIKE VOTE IS NOT
A FORBIDDEN OBJECTIVE

1. Since the legislative history shows that Congress did not intend to leave the union powerless to protect itself against "a man in the union who betrays the objectives of the union, who violates * * * the constitution * * * or the bylaws of the union" (*supra*, p. 19), surely it intended the union to have some effective means of disciplining members who "betray" the union by failing to join a duly authorized strike and to respect its picket line. To be sure, some union objectives may be wholly beyond a union's legitimate sphere of activity so that even legitimate means may not be used to compel the compliance of members. But, requiring members to observe a prop-

(1) (A) itself was not reaching into the area of internal union affairs; and it only mentions union policies with respect to admission and expulsion because that was the specific problem raised by the proviso's sponsor, Senator Holland.

Nor is there merit to the suggestion of the court below that, since fines "may run into thousands of dollars," they "create a far greater burden on the working man than expulsion from his labor organization or even loss of job" (R. 98). As the record shows that the fines imposed ranged from \$20 to \$100 (*supra*, p. 4), no issue as to unduly burdensome fines is presented. Similarly without merit is the Company's contention (Brief in Response to Pet. for Cert. 6) that it is not the amount of the fine actually imposed, but the *threat* that a large one could be assessed, which makes a fine more coercive than other forms of union discipline. The efficacy of any particular sanction obviously depends on the individual to whom it is applied—his wealth, his physical courage and so on. Congress did not attempt to distinguish between degrees of compulsion, but between permissible and impermissible modes of compulsion. In any event, where expulsion entails the loss of substantial insurance and other benefits, the coercive impact of that penalty would appear to be at least as severe as that of a large fine.

erly established union picket line, which they have sworn to respect, is not within the forbidden category.²⁴

As shown (*supra*, pp. 3-4), the strikes involved here were in furtherance of legitimate economic demands, and they were authorized by the Union's membership in accordance with the procedure specified in the UAW constitution.²⁵ Moreover, the UAW constitution, which all members promise to abide by in taking the oath of membership (Art. 6, Sec. 2; Art. 43; R. 36, 38), requires a member to "support strike action" taken in accordance with the constitution (Art. 2, Sec. 3; R. 35), and "in every way [to] acquit himself as a loyal and devoted member of the International Union" (Art. 41, Sec. 2).

A union rule requiring members to support a lawful strike authorized in accordance with the union's constitution is not only reasonable, but, indeed, es-

²⁴ Cf. *Local 138, Operating Engineers* (Charles S. Skura), 148 NLRB 679, and *H. B. Roberts, Business Manager of Local 925, Operating Engineers* (Wellman-Lord Engineering, Inc.), 148 NLRB 674, enforced, *sub. nom. Roberts v. National Labor Relations Board*, 350 F. 2d 427 (C.A.D.C.). In these cases, the Board felt that Section 8(b)(1)(A) *did* bar a union from fining a member for filing unfair labor practice charges with the Board. In the Board's view, a union rule prohibiting the filing of charges with the Board went beyond the area of legitimate internal union affairs—the area which Congress intended to leave subject to traditional union disciplinary measures—and impinged upon the Board's processes—an area which Congress intended to protect against all restraint (see Section 8(a)(4)).

²⁵ This procedure requires: (1) authorization of a formal strike vote by a majority of the members at a membership meeting; (2) a secret poll of all of the members and approval by two-thirds of those voting; and (3) approval by the International Executive Board (R. 38-41).

essential to the union's very existence. As the Board stated (R. 16): "We cannot conceive of a subject which would be more within its competence, since it involves the loyalty of its members during a time of crisis for the union." And, as the Wisconsin Supreme Court added, in *Local 248, Auto Workers v. Wisconsin Employment Relations Board*, 11 Wis. 2d 277, 105 N.W. 2d 271, certiorari denied, 365 U.S. 878:

A union without power to enforce solidarity among its members, when it resorts to a strike in an effort to force an employer to agree to its collective-bargaining demands, is a much-less-effective instrument of collective bargaining than a union which possesses such power. Therefore, there is an intimate connection between the right of a union to fine members, who cross a picket line in order to continue to work during a strike called by the union, and the incidents of collective bargaining sought to be regulated by the Labor-Management Relations Act * * *. [11 Wis. 2d at 288.]²⁸

Furthermore, maintenance of union discipline under these circumstances is vital to the union's effectiveness as an instrument of collective bargaining. Industrial peace, which is a primary objective of the labor law, would hardly be served if unions could not discipline members who engaged in wildcat strikes. Yet neither

²⁸ And note Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049 (1951): "The power to fine or expel strike breakers is essential if the union is to be an effective bargaining agent * * *." See also *id.* at 1066-1067; *Disciplinary Powers And Procedures in Union Constitutions*, U.S. Dept. of Labor, Bur. Lab. Statistics, Bulletin No. 1350 (1963), 31-32.

logic nor the statutory language suggests any basis for distinguishing the minority's right to strike when the majority votes to work from the minority's right to work when the majority votes to strike. As Chief Judge Hastings observed in dissent below (R. 105-106): "I fail to see any congressional purpose to distinguish between wildcat strikers and strikebreakers. The activities of each are equally abhorrent to the establishment of industrial peace through the orderly processes of collective bargaining." In both situations the union must have the right to take reasonable action to compel observance of the majority's decision.

2. Moreover, the Union's action did not violate Section 8(b)(1)(A) for the additional reason that the members who were fined were not deprived of any right protected by Section 7 of the Act. Although Section 7 gives employees the right either to join and assist a union or refrain from such activity, an employee who elects to become a union member, like anyone else who joins a voluntary association, must be deemed to have accepted the legitimate rules and policies of the union (see R. 59, 61). The UAW constitution puts an employee who becomes a formal member of the Union on notice that he is expected to support a lawful strike called by the Union, and that he is subject to fine, suspension, or expulsion if he does not (see p. 4 and n. 4, *supra*). Since requiring union members to support a lawful strike is a legitimate union rule, and the penalties provided for its infraction were likewise permissible, the Company's employees, by joining the Union, in effect waived whatever

protection Section 7 would otherwise afford them against fines, suspension, or expulsion if they refrain from strike activity." As Judge Swygert pointed out in his dissent (R. 122-123), "to read Section 7 as saying that an employee who is also a union member may make an independent, *ad hoc* determination to cross a union-imposed picket line without subjecting himself to reasonable internal discipline is to say that an employee-member may simultaneously engage in protected activity and refrain from so engaging."

The court below found support for its decision in the possibility that under the union security clause in the Union's contract "a substantial minority of the employees *may* have been forced into membership" (R. 102; emphasis added). That speculation is without basis. It is undisputed that the union security provision required an employee to become a union member only "to the extent of paying his monthly dues and initiation fees, if any" (see *supra*, p. 3). Consistent with Section 8(a)(3) of the Act, no more than a dues paying status could be required of the employees," and nothing in the record suggests that any further obligation was imposed in fact. On the contrary, the Union pointed out (Intervenor's Memorandum of Response to Petition for Rehearing, p. 3),

"The employees, of course, cannot be deemed to have waived their right to be free of violence or threat of job loss, because Congress has indicated that these are not permissible means for enforcing union rules.

" See *Union Starch & Ref. Co. v. National Labor Relations Board*, 186 F. 2d 1008 (C.A. 7), certiorari denied, 342 U.S. 815. Cf. *National Labor Relations Board v. General Motors Corp.*, 373 U.S. 734.

and the Company did not dispute (Reply Brief for Petitioner on Rehearing *En Banc*, p. 12):

Since the only obligation that the Union agreement with the Company imposes is the payment of monthly dues, no worker is required to take the oath and subject himself to the requirements of obedience to the common cause * * *.

Furthermore, in the one action brought by the Union to collect a fine that has gone to trial (*Local 248, UAW v. Natzke*),²⁹ the decision of the Wisconsin Circuit Court, upholding the Union's claim, points out that the defendant there was not merely a member to the extent of paying dues and fees. He had been initiated into the union, had taken the oath, had attended union meetings, had cast a ballot in the strike vote itself, and had refrained from working during the first two weeks of the strike. So far as appears, Natzke may have voted in favor of the strike. Nothing in the record in this case shows that the other recalcitrant members were less active participants in union affairs than Natzke (see R. 59, 61). Nor did any of the members who were fined resign their union membership as a result of the fines (*supra*, p. 5).

It appears therefore that, contrary to the court's assumption, each employee had a free choice either (1) to refrain from all union activities except payment of the required dues and fees, or (2) to adhere to the union, take the prescribed oath of fidelity, participate in the union's affairs, and abide by the union's rules and decisions.

²⁹ The opinion of the Circuit Court for Milwaukee County, Wisconsin, in *Local 248, UAW v. Benjamin Natzke*, No. 313-673 (March 3, 1964), is unreported. It is set forth in Appendix B, *infra*.

In sum, the Board properly concluded that the Union did not violate Section 8(b)(1)(A) of the Act by fining those of its members who refused to adhere to a strike duly authorized by the membership, nor by attempting to collect such fines through court action.

CONCLUSION

The judgment of the court below setting aside the Board's dismissal of the complaint should be reversed.
Respectfully submitted.

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DECEMBER 1966.

APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*) in addition to those set forth *supra*, pp. 2-3, are as follows:

Sec. 8.(a) It shall be an unfair labor practice for an employer—

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same

terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

(b) It shall be an unfair labor practice for a labor organization or its agents—

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

Sec. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

APPENDIX B

Decision of Circuit Court for Milwaukee County, Wisconsin, March 3, 1964, in *Local 248, UAW v. Benjamin Natzke*, No. 313-673.

This is an appeal from a judgment of the County Court, Civil Division, of Milwaukee County in favor of plaintiff, Local 248, UAW, and against defendant, Benjamin Natzke, entered on the 21st day of May, 1963, in the amount of \$153.88, the Hon. Edwin C. Dahlberg, County Judge, presiding.

The action was brought to enforce the collection of a fine levied by the plaintiff union against the defendant, one of its members.

The defendant is a long-time employe of the Allis-Chalmers Manufacturing Company, having entered such employment in April, 1947. The plaintiff union represented production and maintenance employes at the West Allis plant for a long period of time. The defendant had no relationship with the plaintiff union until the effective date of the labor agreement referred to as Exhibit No. 1 (September 3, 1955). At that time the defendant signed a check-off authorization pursuant to the so-called "Union Shop Agreement." The defendant on August 3, 1958, cast a ballot on a so-called "Strike Vote" taken by the union. The defendant also attended a meeting of the membership on February 2, 1959, at the Milwaukee Auditorium.

While a strike was in progress, the defendant stayed away from work for a period of about two weeks and then returned to work while the strike was

still in progress. Later charges were filed against him by other members of the union alleging that he engaged in conduct unbecoming a union member. The defendant was notified of the charges against him and was furnished a copy of them.

A trial committee was selected and on July 7, 1959, a hearing was held. The defendant was represented by counsel and participated in the proceedings. The defendant was found guilty of the charge of conduct unbecoming a union member and a fine of \$100 was assessed against him. The finding and penalty were ratified by the union membership, the defendant was notified of the action of the membership, and demand was made upon him for payment of the \$100 fine. The defendant attempted to appeal to the International Union but the appeal was declined because the fine had not been previously paid.

The parties stipulated that the defendant was notified that charges had been filed against him and was given a copy, the charges being he was guilty of conduct unbecoming a union member; that on the 7th day of July, 1959, following the selection of a trial committee pursuant to the constitution, the first hearing was held; that defendant appeared by counsel and participated in the proceedings being held before the trial committee of the local union; that in the course of the testimony counsel for defendant argued his position in favor of a dismissal of the charges and the trial committee took the matter under advisement; that on September 12, 1959, the trial committee submitted its findings, decision and judgment to the membership of the local union; that the membership approved the finding of guilty and the penalty of \$100; that the defendant was notified of the results of the action of the membership.

The trial court in its memorandum decision found that the defendant was a long-time employe of the Allis-Chalmers Manufacturing Company; that prior to 1955 the defendant had no relationship with the plaintiff union; that in 1955 the union entered into an agreement with the company which agreement, among other things, provided for what is commonly referred to as a "Union Shop Agreement"; that defendant subsequent to the signing of the "Union Shop Agreement" signed a check-off card and in this manner provided for the payment of his initiation fee and for periodic payment of union dues; that defendant was initiated into the union and took an oath of membership; that he attended two meetings and by his actions became a member of the union for all purposes;

That the defendant returned to work during the strike; that charges were filed against him by other members of the union alleging that he engaged in conduct unbecoming a union member; that there is no evidence that would establish that it was impossible or unreasonable or overly burdensome for defendant to first pay the fine imposed by the trial committee tribunal as a condition of appeal; that defendant failed to exhaust the remedies available to him within the union; that defendant had not brought himself within an exception to the exhaustion of remedies rule; that the fine had been duly imposed and not paid; that no proper appeal had been taken within the union.

Defendant Natzke's first contention, that no contractual relationship is established between a local union and a member who joins involuntarily by reason of a "union shop" or maintenance of membership agreement, cannot be sustained under the evidence adduced.

The trial court made a finding that defendant Natzke became a member of the union for all purposes and there is evidence to support that finding. The defendant signed the check-off authorization pursuant to the so-called "union shop" agreement. There was testimony of his initiation as a member and his attendance at a strike vote meeting on August 13, 1958, and also his attendance at a membership meeting on February 2, 1959, held in the Milwaukee Auditorium.

The further argument that defendant could not by his actions waive a substantial statutory right, namely, the right provided by subsection 7 of the Federal Act to abstain from any and all union activity, cannot be sustained in view of the defendant's activity and the provision of subsection 7 of the Labor Management Relations Act, which provides:

"... except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in sec. 158 (a)(2)."

As the trial court stated:

"Having taken advantage of the prerogatives of Union membership he has assumed all of the duties of membership."

Having become a member of the union for all purposes, defendant was subject to such of its rules which are nondiscriminatory and provide for forfeitures in case of violation.

Defendant also contends that the offense with which he was charged is not prescribed with any degree of definiteness and certainty as required by law.

This contention cannot be sustained. The defendant was specifically charged with conduct unbecom-

ing a member. He testified that he had a trial before the union trial committee on July 22, 1959, and was advised that the charge was made because he went back to work during a strike. He also admitted receiving a notification in the form of a warning. The specific charge of conduct unbecoming a member is provided for in Article 30 of the International Union's Constitution and apparently is a specific charge that covers a multitude of offenses.

Defendant also contends that he has a right to assert as an affirmative defense a pre-existing breach of the same contract by the plaintiff in a respect relevant to the controversy.

In effect, defendant asserts that the strike called by the plaintiff union was tainted with irregularity. The evidence does not support that allegation. The evidence shows that at a preliminary membership meeting in July, 1958, the terms of a new contract were discussed, that a secret ballot for a strike authorization was taken on August 13, 1958, that at a special meeting called for that purpose a majority of the membership authorized the labor union to call a strike at such time as the executive board found it necessary.

The trial court made a finding that the defendant in this matter had failed to exhaust the remedies available to him within the union. The defendant contends that the conditions imposed by the constitution of the International Union as a pre-requisite to appeal are burdensome and oppressive in respect to advance payment of the fine and in respect to the lengthy delay in time of processing such an appeal.

The Court is of the opinion that the requirement of payment of the fine as a pre-requisite to appeal is not unreasonable or burdensome.

Defendant's next contention is that the levy of a fine of \$100 against the defendant for continuing to work during a strike called by the plaintiff is an act of coercion on the part of the plaintiff and violates the provisions of section 8(b)(1)(A) of the National Labor Relations Act as well as section 111.06(2)(a) of the Wisconsin Employment Peace Act.

The Court is of the opinion that the instant situation is governed by the recent decisions of the National Labor Relations Board in the case of *United Automobile, Aircraft and Agricultural Implement Workers of America, UAW Local 283, Wisconsin Motor Corp., AFL-CIO and Russell Seofield, an Individual, et al.* 145 NLRB No. 109, Cases Nos. 13-CB-1059-1, 1059-2, 1059-3, and 1059-4, (January 17, 1964), and the case of *Local 248, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO and Allis Chalmers Manufacturing Company, Case No. 13-CB-1066* (January 31, 1964).

These cases involved the infraction of an International Union rule and in all cases the union restricted the enforcement of its rule to an area involving the status of a member as a member rather than as an employee. Clearly under the above rulings the plaintiff union has not engaged in an unfair labor practice within the meaning of section 8(b)(1)(A) of the National Labor Relation Acts or section 111.06(2)(a) of the Wisconsin Statutes.

Defendant also contends that the assessment of a fine violates the express right granted to the defendant by section 7 of the National Labor Management Relations Act, which provides:

"Employees shall have the right to self-organization, to form, join, or assist labor or-

ganizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3)."

The above section gives employes the right to refrain from any or all of the activities above mentioned except to the extent that such right may be affected by a "closed shop" agreement and also by the extent to which an employe joins a union. In this case the defendant was found to be a full member of the union for all purposes and, therefore, there was no express right of the defendant violated.

As was stated in *Local 248, U.A.A. & A.I.W. v. Wis. E.R. Board*, 11 Wis. (2d) 277, 288:

"A union without power to enforce solidarity among its members, when it resorts to a strike in an effort to force an employer to agree to its collective-bargaining demands, is a much-less-effective instrument of collective bargaining than a union which possesses such power."

"A union must have authority to discipline its members, otherwise it will have no power to bargain effectively."

Sanders v. International Association of Bridge, Structural & Ornamental Iron Workers, et al. 235 F. 2d 271-272.

The defendant lastly contends that the state courts are without jurisdiction in this matter.

In support of this contention defendant cites the case *Local 248, U.A.A. & A.I.W. v. Wis. R. R. Board*, supra, in which the Wisconsin Supreme Court held

that the W.E.R.B. had no jurisdiction to review the action of the union in fining members who crossed a picket line to work during a strike. Defendant further contends that the trial court reached a correct conclusion on the question of pre-emption but erroneously asserted jurisdiction.

This Court is of the opinion that the question of preemption is not involved in the action at bar and that the above-cited case of Local 248 v. W.E.R.B. only establishes a rule that the Wisconsin Employment Relations Board has no power or jurisdiction to interfere in the internal affairs of a union which is the certified representative of the employees of a company engaged in interstate commerce.

The present case involves questions relating to the internal affairs of a labor union and its disciplinary power over its members under the union's constitution and by-laws which constitute a contract between the union and its members.

United Automobile, A.&A.I. Workers v. Movchik, 5 Wis. (2d) 528.

This is an action for the collection of a penalty or forfeiture for violating a rule or by-law of the union. There was a breach of the contract governing relations between the union member and the union.

International Assn. of Machinists v. Gonzales, 356 U.S. 617.

The County Court, Civil Division, of Milwaukee County had jurisdiction to determine the issues under our local law of contracts and to provide relief in the nature of a fine or forfeiture as damages.

The Court being of the opinion that the material findings of fact made by the trial court are supported by the evidence, and the Court being of the opinion

that the County Court, Civil Division, of Milwaukee County had jurisdiction over the subject matter, the judgment of the County Court, Civil Division, of Milwaukee County entered on the 21st day of May, 1963, is hereby affirmed.

Office-Supreme Court, U.S.
FILED

JAN 27 1967

JOHN F. DAVIS, CLERK.

IN THE
Supreme Court of the United States

October Term, 1966

No. 216

RECEIVED

JAN 27 1967

NATIONAL LABOR RELATIONS BOARD, ^{CLERK OF THE CLERK}
^{SUPREME COURT, U.S.}
Petitioner,

v.

ALLIS-CHALMERS MANUFACTURING COMPANY and INTERNA-
TIONAL UNION, UAW-AFL-CIO (Locals 248 and 401).

On Writ of Certiorari to the United States
Court of Appeals for the Seventh Circuit

**BRIEF FOR THE NEW YORK TIMES DISPLAY
ADVERTISING SALESMEN STEERING
COMMITTEE, AMICUS CURIAE**

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Dated: January 26, 1967

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**BRIEF FOR THE NEW YORK TIMES DISPLAY
ADVERTISING SALESMEN STEERING
COMMITTEE, AMICUS CURIAE**

This brief, *amicus curiae*, is filed on behalf of The New York Times Display Advertising Salesmen Steering Committee in support of the decision of the court below.

The Intervenor

The New York Times Display Advertising Salesmen Steering Committee is an unincorporated association of some 43 employees of The New York Times. The Committee is wholly independent of any labor organization or any company or management group; the expenses of the Com-

mittee are paid by contributions of the individual members. The Committee was formally organized in January, 1966, as a consequence of the extension of a labor contract's union shop provisions to certain members of the group. Prior to the most recent collective bargaining agreement, some but not all of The Times' advertising salesmen were subject to compulsory union membership; to all intents and purposes, the exceptions to compulsory unionism were removed by The Times and the Newspaper Guild in the contract effective March 31, 1965. Since its organization, the Committee has acted on behalf of its members in a number of ways, including the filing of a deauthorization petition with the National Labor Relations Board and the provision of advice and legal counsel to the individual members as to the limits of their compulsory obligations to the Newspaper Guild.

The Newspaper Guild has brought to trial, under its internal union procedures, some 23 members of the Committee for the "anti-union offense" of having crossed a Newspaper Guild picket line in 1965. In a decision of the Newspaper Guild Trial Board dated January 9, 1967, the individual employees were found guilty of offenses against the Union and fined an amount equal to that earned during the strike, up to four weeks' pay; this could range as high as \$1,500.00.

POINT I

Employees' statutory rights must prevail over contractual compulsion.

Amid the welter of secondary material that has been offered to this Court, we might pause to recall the wry comment of Justice Holmes, who wrote:

"Only a day or two ago, when counsel talked of the intention of the legislature, I was indiscreet enough to say I don't care what their intention was. I only want to know what the words mean."

Thus, this case is one requiring the application of a statute. That statute, the National Labor Relations Act, as amended, states in its declaration of policy, Section 1(b), in pertinent part, that:

"It is the purpose and policy of this Act, in order to promote the full flow of commerce, *to prescribe the legitimate rights of both employees and employers in their relations affecting commerce*; to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, *to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce*, to define and proscribe practices on the part of labor and management which affect commerce

* Quoted by Frankfurter, J., "Some Reflections on the Reading of Statutes", Record of The Association of the Bar of the City of New York, 1947, vol. 2, 228. Frankfurter, J., adds:

"Legislation has an aim * * *. That aim, that policy, is not drawn, like nitrogen, out of the air; it is evinced in the language of the statute, as read in the light of other external manifestations of purpose. That is what the judge must seek and effectuate, and he ought not to be led off the trail by tests that have overtones of subjective design."

and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce." [Emphasis added.]

It is important to understand that the rights that are to be protected by the Act are those of the individual employees. At its outset, the Act makes clear that labor organizations are only intended to be a vehicle for the vindication of these individual employee rights; such organizations are not intended to acquire either position or privilege at the expense of or in substitution for the rights of the employees they are chartered to protect.

This basic purpose and policy of the Act is implemented in Section 7, which provides:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and *shall also have the right to refrain from any or all of such activities* except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)." [Emphasis added.]

Nothing can be more clear from the language of the statute than that the employee's individual right to refrain from concerted action is unfettered and unrestrained—as it would be without governmental intervention—except to the extent of the obligations authorized by Section 8(a)(3) of the Act.

Without quoting Section 8(a)(3) *in extenso*, we believe it is accurate to summarize that provision and the decisions interpreting it as permitting a union and a company to enter an agreement requiring an individual's union membership to the extent that an individual may be required to pay "periodic dues and the initiation fees uniformly required".

The very form which this exception takes gives rise to some relevant observations. First, it should be noted that the source of obligation upon the individual employee authorized by Section 8(a)(3) is a *contract* to which he is not a party. It obscures the issue to argue that in signing a union security clause the union acts as the employee's agent or representative. Although this may be true, within the meaning of the Act, when the union is bargaining with the employer for the individual's advantage, it certainly cannot be true or in any way prejudice the individual when the company and the union are bargaining away a right which the individual would otherwise have against the union itself. We do not think anyone would seriously suggest that under these circumstances the employer is representing the individual. The long and short of it is that there are two independent parties, motivated by their own self-interest, bargaining over the rights of the individual, who is not seated at the bargaining table. A restriction on the individual's general right under a clause arising out of such an agreement must certainly be carefully scrutinized and closely circumscribed. Moreover, the form of the statute itself plainly indicates that contracts and restrictions agreed upon pursuant to 8(a)(3) constitute an exception to the general right, and it is "the ele-

mentary rule * * * that exceptions from a general policy which a law embodies should be strictly construed; that is, should be so interpreted as not to destroy the remedial processes intended to be accomplished by the enactment." *Spokane & Inland Empire R. R. Co. v. U. S.*, 241 U. S. 344, 350 (1916); *Interstate Natural Gas Co. v. F. P. C.*, 156 F.2d 949 (5th Cir. 1946), *aff'd* 331 U. S. 682 (1947).

The Federal agencies responsible for the administration of the recently enacted civil rights laws have been quick to recognize that collective bargaining agreements cannot restrict rights guaranteed to employees by statute, no matter how important a particular contractual provision may seem to the union claiming its application. See administrative authorities cited in CCH, Employment Practices Guide ¶¶1725.034, 1725.042, 1725.043. The statutory freedom from being forced to join in concerted activities would seem to stand in equal dignity with a statutory freedom of opportunity.

If we can then agree that the statute means what it says and individuals have a right to refrain from "any or all" concerted activities under Section 7 of the Act, it remains for the Court to decide only whether a union violates Section 8(b)(1) of the Act and restrains an employee in the exercise of his rights under Section 7 when it imposes a fine upon that employee for refraining from participating in the union's strike, picketing or any other form of concerted activity.

To argue that a monetary fine is not "restraint" or "coercion" is scholasticism of the worst sort. Indeed, the National Labor Relations Board has only recently used its

earlier findings that fines constitute a form of coercion within the meaning of Section 8(b)(1) to conclude that expulsion from a union, as a penalty, is a form of such coercion. *Cannery Workers Union of the Pacific (Van Camp Seafood Co., Inc.)*, 159 N. L. R. B. No. 47 (1966); *Brotherhood of Painters, Decorators and Hangers of America Local Union No. 585*, 159 N. L. R. B. No. 98 (1966).

The Solicitor General admits that the union would have violated the Act if it had threatened the individual employees "with a loss in employment benefits (after the strike ended)" (Brief, p. 30) and goes on to argue that "no rational purpose would be served by permitting expulsion but prohibiting fines" (Brief, p. 31). These two positions it seems to us, indicate a confusion as to the meaning of the terms "coercion" or "restraint" and the interests which are to be protected under the Act.

Apparently the Solicitor agrees that a threatened loss of employment benefits is a restraint on an individual's action. Certainly the restraint would not arise out of the employee's frustrated desire to save Alms-Chalmers inconvenience. The restraint is the direct result of the employee's anticipated economic loss—in other words, dollars out of his pocket. Assuming that a man's salary is \$100 per week, he suffers the same loss when that \$100 is taken out of his pocket through a fine as when it never gets into his pocket because he is deprived of a week's work. The Solicitor's position would certainly not be altered if the threat against the employee was only that he would lose a single holiday day's pay; similarly, the Solicitor's argument cannot be advanced by any

contention that the fines involved in this case are relatively small. The principle is, of course, the same, and the restraint is there. Furthermore, the precedent established in this case would be equally applicable to situations such as those obtaining in *H. B. Roberts, Business Manager of Local 925, Operating Engineers (Wellman-Lord Engineering, Inc.)*, 148 N. L. R. B. 674, enforced *sub nom.*, *Roberts v. National Labor Relations Board*, 350 F.2d 427 (C. A. D. C.); and *Minneapolis Star and Tribune Co.*, 109 N. L. R. B. 727, 738, where the fines were \$450 and \$500, respectively, and in cases arising under the American Newspaper Guild Constitution which allows the Trial Board to fix fines of indeterminate amount. As we have noted, members of the Intervenor's group have been fined as much as \$1,500.00, and the fines have been made a direct equivalent of four week's work.

Contrary to the Solicitor's contention (Brief, p. 31), there *would* be a "rational" purpose in permitting expulsion as a union penalty but prohibiting fines. The economic losses that an individual would suffer as a result of expulsion consist of the loss of benefits which arise as a consequence of his union membership; it might, therefore, be both rational and equitable to deprive an individual of such a set of benefits where he is unwilling to undertake the full range of obligations established by the union. On the other hand, the penalty of a fine is in no way related to the deprivation of a benefit conferred on union members as a consequence of their union membership. A fine simply takes money out of a man's pocket, money that he has earned or must earn in his *employment* relationship. Where the union exercises a power to fine, it reaches beyond the scope

of its inherent powers and vests itself with the power of both the employer and the judicial processes to restrict a man's action. In the proceedings affecting the Intervenor, their representative has stated that the individuals involved are willing to suffer any penalty the union may mete out except fines or other economic impositions related to their employment; in short, they would not contest an expulsion from the union. Certainly the Solicitor General may be right in suggesting that some economic loss may arise from expulsion. There may, for instance, be the loss of strike benefits or participation in union-administered, voluntary benefit programs. If the loss is as substantial as the Solicitor claims, it would seem he could not effectively argue that the deprivation of the fine as a union penalty would strip the union of effective means for maintaining discipline within its own house. The crucial difference would seem to be that expulsion is a fair and effective weapon against those who have chosen to stay in that house, whereas fines reach out to punish those who would assert their right to refrain from any but the most minimal union obligation and who have only been brought within the union's reach by a contract with the employer pursuant to the limited and restrictive provisions of Section 8(a)(3). The court, in *Leeds & Northrup Co. v. N.L.R.B.*, 357 F.2d 527, 536 (3rd Cir., 1966), understood this precise point when it ruled:

"In some instances, as where only the status of the employee as a member of the union is affected, union fines standing alone may not violate the Act. But to equate union fines with total wages earned by a non-striking employee is the grossest form of economic coercion affecting not only union membership status but also the relationship between the employee and his em-

ployer in violation of the Act. Such economic coercion is calculated in design and effect to force an employee to act in concert with the union in future labor-management strife. Congress has imposed strict limitation on compulsory unionism, and the Supreme Court has determined the obligation of union membership to be confined solely to the payment of dues. *Radio Officers' Union, etc. v. N.L.R.B.*, 347 U. S. 17, 74 S. Ct. 323, 98 L.Ed. 455 (1954); *N.L.R.B. v. General Motors*, 373 U. S. 734, 83 S.Ct. 1453, 10 L.Ed.2d 670 (1963); *Union Starch & Refining Co. v. N.L.R.B.*, 186 F.2d 1008, 27 A.L.R.2d 629 (7th Cir. 1951), cert. den. 342 U. S. 815, 72 S.Ct. 30, 96 L.Ed. 617 (1951); *Int'l U. of Elec., Radio & Machine Workers AFL-CIO, Frigidaire Local 801 v. N.L.R.B.*, 113 U. S. App. D. C. 342, 307 F.2d 679 (1962)." [Footnote omitted.]

A final observation as to the coercive nature of fines need take us no further than the criminal courts, where the sentence may range from the J.P.'s "30 days or \$30" to the imposition of fines running into the scores of thousands for antitrust violations. Of course, the plain purpose of such sentences and the laws underlying them is to punish and coerce. Here, the criminal law plainly recognizes that a man's free time is also his earning time and may be given a money equivalent. Again, we must observe that there is no lessened coercion where an individual is allowed to work for 30 days and his earnings are then taken away from him than there is where he is prevented from going to work for 30 days in the first place; if anything, the fine is worse and more coercive. The Solicitor attempts to distinguish certain cases decided by the Board (Brief, p. 15-16) characterizing fines as coercive by arguing that such fines were imposed for an illegitimate purpose. However, the purpose

for which the fines are imposed cannot alter the coercive character of the penalty itself. Such purpose only informs us as to whether the coercion is legitimate. As we have seen, coercion here being considered is intended to be a restraint upon a right guaranteed to the employees under the Act. Nothing can alter the fines' coercive nature; nothing in the Act can justify its purpose.

POINT II

Employees' compulsory union membership is not a contractual commitment.

Much of the Solicitor's attempt to narrow the scope of individual employees' rights under Section 7 is based upon the proviso to Section 8(b)(1) which states "that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein". In the first place—and this should really be sufficient—the penalty to which objection is being made is not one which affects the acquisition or retention of the individual's union membership. Just the contrary, as we have pointed out, there is a substantial difference between a union action affecting an individual's status within that organization and its action which reaches out and affects the employee's employment relationship to a third party; in fact, the Intervenor's have made it plain in their own proceeding that they have no objection, or even interest, in any action that the union may take with respect to their membership so long as such action does not affect their job rights.

It is undoubtedly true that the Congress was reluctant to permit the operation of its Taft-Hartley amendments to interfere with traditional internal union operations which were not in conflict with the basic purposes and policy of the Act. The basis for such a legislative attitude can be found in the comments of W. Friedmann in his work on "*Law In A Changing Society*" 260 (Pelican Ed. 1964):

"The ideological motive is respect for freedom of association, and a long-standing disinclination of the courts to interfere in domestic quarrels. An American commentator has summarized this attitude as follows:

'This reluctance is a product of long judicial experience in attempting to settle family fights in religious and fraternal associations. The courts have recognized that they have no workable standards for refereeing disputes based on obscure doctrines within a church, or for judging the virtues of cliquish factions within a lodge * * *'

"By default rather than by detention the theory was applied to the emergent labour unions."

However, as Friedmann goes on to point out, the legal approach to associations, including labor unions, and the regulation of their control over their members must change as the status of membership ceases to be a voluntary one and becomes, instead, a coerced or economically necessary one. Under such circumstances, the immunity of voluntariness can no longer be invoked, and the control of the association over its members becomes one of public concern.*

* "The term 'voluntary' is frequently used in connection with the term 'association' or 'society,' and some principles of law are confined, in their operation, to 'voluntary' organizations. In this connection, the term means simply that the organization is one in which one may seek, or be accepted into, membership in the organization as a matter

Where a union's membership is truly voluntary, it is appropriate to invoke the shibboleths of union "loyalty" and "discipline" used by the Solicitor. Such a union member's obligations under a constitution and by-laws may truly be voluntary contractual ones to which he may be held as part of the bargain he has made with other union members. There are strong unions in this country and there are entire trade union movements in other Western countries* whose membership is composed of just such voluntary adherents.

In the instant case, however, the union has chosen not to rely upon the inherent attractions of its policies or organization to enlist voluntary members. Instead, the union has entered a contract with another party, the company, by which it is agreed that individual employees shall be forced to join the union on pain of losing their jobs. This right to compel membership is certainly inconsistent with and must be considered to be at the expense of any union claim that its membership is a compact of individuals freely associated with one another. If, in acquiring its right to compel membership under the statute, the union must surrender some portion of its power to discipline individuals who do not follow its internal policies, the union must certainly be considered to have made the better of the bargain—and, in all events, its own bargain.

of choice. If membership is required by legislative mandate, such as in the case of public officers or employees, or if membership in a professional society is necessary, in a substantial sense, for the practice of one's profession in the particular locality, such an organization is not a 'voluntary' organization." [Footnotes omitted.] 6 Am. Jur. 2d 430.

* See Friedmann, *supra*, p. 256, *et seq.*

The Solicitor suggests that the individuals involved in this case only had an obligation to pay dues and that they "voluntarily" assumed the other obligations of union membership. We assume the Solicitor concedes that if some yet undefined but appropriate declaration had been made, the individual employees could have freed themselves from all but the monetary obligations of union membership. The kindest characterization of this theoretical approach would be to call it disingenuous. All one need do is consider the realities of a typical industrial relations situation at the plant site. In a new representational situation, the union has won an election or been recognized as the exclusive bargaining representative. All concerned are either convinced or informed that the union is the individual's representative. The employees are further informed that they must join the union within thirty days or lose their jobs and that the employer will enforce this obligation. Our typical employee earning \$100 a week does not then retain a labor relations attorney or even a family counselor to advise him as to the scope of his union membership obligations. Indeed, there should be very little question in his mind about what he has to do; he simply has to join the union. In due course, he receives his membership application form—not several, among which he may choose—one form. He signs that application form and sends it in with his initiation fee to the union. The Solicitor General argues that this individual has now made a deliberate and voluntary decision to accept and abide by the terms of the union's constitution and by-laws, which may run several hundred pages and include strictures by the Local, the International, and even the Federation. In most instances, and in the situation involving the Intervenors, the Union Constitution and

By-Laws are not delivered to the individual until well after he has signed his membership application. As a practical matter, the involuntariness of the membership obligation is even plainer when an employee enters an already established bargaining unit and his signature to membership cards and applications is simply a matter of unexamined, community routine.

We would emphasize the fact that there is no agency—not the National Labor Relations Board, nor the Department of Justice, nor the Department of Labor—public or private, which stands ready to advise the individual as to how he may reserve any of his rights where he has been forced to join a union pursuant to a collective bargaining agreement. If unions wish to penalize “disloyalty” and still enjoy the forced draft of union shop provisions, then it is they that should have the obligation of informing prospective members of the full scope of the individual’s rights and all of his options. Otherwise, the totality of such “membership agreements” can no more stand strict enforcement than can any other contract in which one party has misled the other by failure of full disclosure.

This Court, in decisions by its most distinguished jurists has made it plain that an individual will not be found to have waived a Federal right where the so-called “agreement” is the product of economic duress, *Union Pac. R. Co. v. Public Service Commission of Missouri*, 248 U. S. 67 (1918); *Atchison, Topeka & Santa Fe Ry. Co. v. O’Connor*, 223 U. S. 280 (1912); nor will ordinary contracts be enforced when they can be traced to the exercise of unfair advantage, *Lonergan v. Buford*, 148 U. S. 581 (1893). The general description of unenforceable, “involuntary” agree-

ments in American Jurisprudence is almost a perfect exposition of the circumstances now before the Court.*

The Norris-LaGuardia Act, 29 U. S. C. §103, eliminated one form of contract which an individual employee might enter when it proscribed the yellow dog contract. The theory for this legislation, which has now become a key factor in our national labor policy, rested in the necessity of preserving the disadvantaged individual from the inequalities of an unfair bargaining situation with management. Senator Wagner described circumstances under which the "yellow dog" contract was usually executed, 75 Cong. Rec., Pt. 5, p. 4916, 72d Cong. 1st Sess:

"Weigh the significance of these facts: To the employee out of work the job means everything—rent, food and clothing for his wife and children. To the large business organization no worker is indispensable; there is always another to take his place. There is no opportunity for bargaining, there is no possibility of bargaining between parties whose powers are so violently unequal. The employee must either accept the terms of employment as they are tendered or go hungry.

* "Undue influence may prevent the formation of a binding contract. What constitutes undue influence is a question depending upon the circumstances of each particular case. * * * Whenever the relationships between the parties appear to be of such a character as to render it certain that they do not deal on terms of equality, but that unfair advantage in a transaction is rendered probable either because of superior knowledge of the matter derived from a fiduciary relationship or from overmastering influence on the one side, or from weakness, dependence, or trust justifiably reposed on the other side, the presumption is that the transaction is invalid, and it is incumbent on the stronger party to show affirmatively that no deception was practiced or undue influence used and that every thing was fair, open, voluntary, and well understood." 17 Am. Jur. 2d 505.

“When we consider the personal implications of the anti-union promise, that the employee undertakes to keep himself defenseless against oppression, powerless to bargain, powerless to withhold his services, without means to improve his condition or to reduce somewhat the frightful insecurity in which he lives, we come to the further conclusion that this promise is what the law calls harsh and unfair and what conscience denounces as wicked and infamous. Such an unholy transaction is not entitled to the protection of equity. (Kimberly v. Jennings, 6 Simons, 340.)”

Similarly, the Labor-Management Relations Act in Sections 7 and 8(b)(1) must be taken to protect the disadvantaged individual from the inequalities of an unfair bargaining situation with a union in which he cannot know, much less contend with, the obligations being forced upon him.

POINT III

The decision of the Court of Appeals will not affect the stability of industrial relations.

The National Labor Relations Act, as amended, and the decisions of this Court establish one cardinal point which is not in issue in this case; that is, that the duly designated union, as a matter of legislative enactment, is the exclusive bargaining representative for the employees in the bargaining unit. Congress has decreed that it is only the union, to the virtual exclusion of the employee, which may contractually establish terms and conditions of employment; this is a right which the employee must surrender. The obligations set forth in the collective bargaining agreement become binding on the individual, as well as upon the union. Both the employee's rights—his compensation, his benefits, and the like—and his obligations—the hours he

must work, the discipline he must abide—are established by the contract made for him by the union. The scope and fulfillment of his obligations to his employer are determined by union action. Therefore, the Solicitor raises a false issue when he contends that the decision of the court below would lead to uncontrollable wildcat strikes. First of all, such a strike would be a breach of the individual's obligations under the labor agreement with his employer and could be punished appropriately by management. Second, we suggest that a wildcat strike in defiance of union negotiated contract terms is a violation of the employee's statutory obligation to vest exclusive bargaining authority in the union. As such, it might be held that such type of statutory misconduct by the individual would be subject to appropriate disciplinary action. In contrast to the wildcat strike, the employee's decision not to picket does not interfere with the continuity of the bargaining relationship or prevent the negotiation of a single agreement by the individuals' exclusive bargaining representative. The stability of labor relations achieved through collective bargaining will in no way be damaged and may well be enhanced by the full protection of those rights reserved and guaranteed to the employee by Section 7 of the Act.

Conclusion

The Court is here faced with a question of statutory construction. An attempt has been made to muddy the judicial waters by contending that a single penalty is coercive when it is used for one purpose but is innocent when it is used for another purpose. In short, problems of interpretation have been created where by the language of the statute itself none exists.

Against the weight and purport of the statute's language, which is wholly consistent with rational purposes, the Solicitor has offered a potpourri of legislative comments and, more often, reflections on the omission of such comments. However, we do not believe that the statute is so obscure that the Court must weigh one remark by Senator Taft supporting the conclusion of the Court below (Brief, p. 27) against another remark by Senator Ball (Brief, p. 23); nor should the language of the statute be obscured by lengthy quotations from the legislative materials which deal with the most atrocious forms of coercion but omit, for reasons best known to the orators or for no reason at all, any reference to fines.

Charles P. Curtis writes in "A Better Theory of Legal Interpretation", *Jurisprudence in Action*, 143 (Ass'n of the Bar of the City of N. Y., Baker Voorhis 1953):

"The doctrine [of using secondary materials] has had a natural, but surely an unintended, consequence on legislation. It gives anyone who drafts an act, committee members and its counsel, the administrative agency involved, even lobbyists, a right, anyhow the opportunity, to plant expressions of intention for the very purpose of having the courts nose them out and use them. Archibald Cox says in an article on The Labor Management Relations Act in the *Harvard Law Review* for November, 1947, 'It is becoming increasingly common to manufacture "legislative history" during the course of legislation. The accusations of outside participation made in Congress, and the elaborate interpretations in some passages in the committee reports, suggest the danger that this occurred during consideration of the Taft-Hartley amendments.'

“* * * Let [the courts] stop peering over the shoulders of legislative committees and sitting in the strangers' gallery. The Congressional Record is not the United States Code.”

A reversal of the Court of Appeals can only occur if this Court finds that the contractual rights of the Union *against* the individual arising from the union-management agreement are superior to the individual's right of freedom from restraint set out in the statute itself.

The enactment before the Court is, on its face, plain in its purpose to preserve the individual's freedom to either join or refrain from concerted activity. It deliberately limits coercion or restraint upon the individual to those situations in which collective action is necessary to prevent bargaining chaos; it prohibits restraint or coercion to force an individual to join in concerted activity where the purpose merely is to enhance the economic power of one of the bargaining parties.*

* In a discussion of the case now before the Court, the Harvard Law Review Comments, 80 Harv. L. Rev. 683, 687 (1967):

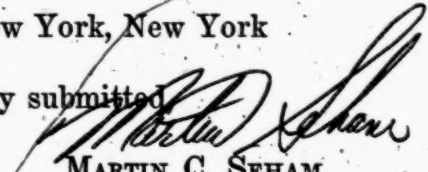
“Balancing the interests involved, it is likely that whereas genuine pro-strike morale among the bulk of the membership is a factor crucial to the union's ability to call a successful strike, the union has not argued and shown a serious need to substitute for that morale the power to coerce recalcitrants; absent clear need the NLRA's bias against coercion and in favor of persuasion as the technique of union cohesion seems dispositive. Against the union's interest in an artificial solidarity must be weighed the member's section 7 interest in freedom from restraint. If denied the power to fine the non-striking member, the union retains both its proviso-secured expulsion sanction and the potent devices of informal ostracism.”

We recommend for the Court's consideration the entire commentary cited as a disinterested review of many of the issues involved in this case.

In this case, the Union demands that its members march. It is not a march of the Ancient Order of Hibernians; it is a picket line march designed to coerce and exert economic force. The St. Patrick's Day Parade is a voluntary display by members voluntarily joined and mutually obligated. We suggest that the rights among themselves of such marchers are far different than those which a union may properly wield against compulsory members. We respectfully urge the Court to reflect upon the inconsistency with our democratic patterns of sanctioning a rule of law which would force American workers first to join an organization and then to march in its most militant formations on pain of the harshest economic penalty.

Dated: January 26, 1967, New York, New York

Respectfully submitted



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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 216

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

**ALLIS-CHALMERS MANUFACTURING COMPANY AND
INTERNATIONAL UNION, UAW-AFL-CIO (LOCALS
248 AND 401)**

**BRIEF FOR ALLIS-CHALMERS
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248 AND 401)

**BRIEF FOR ALLIS-CHALMERS
MANUFACTURING COMPANY**

STATEMENT OF THE CASE

The necessary and relevant facts of this case were fully stipulated.

During the economic strikes in 1959 and 1962 by the local unions herein involved, the Company maintained its "open-door" policy of permitting to work those employees who elected to refrain from striking. (R. 27, 29) Some employees worked during these strikes. (R. 27, 29) The Company neither hired replacements for the striking employees (R. 27, 29) nor interfered with the right of employees to strike, or not to strike.

About three weeks after the 1959 strike began, Local 248 threatened employees with fines of \$100 for each day worked during the strike.¹ (R. 42) The strike continued for about eight weeks thereafter. (R. 27)

At the conclusion of each strike, each employee who worked was fined up to \$100 by the local unions herein involved (R. 28, 31). State court actions were instituted by such locals to collect the fines, (R. 28, 31) as permitted by the existing Wisconsin precedents.²

For the purposes of this proceeding it was stipulated that all non-probationary employees in the bargaining units represented by the local unions herein were members of such locals pursuant to union security provisions of the parties' labor agreements. (R. 26, 31)

Upon the foregoing facts, the Court of Appeals for the Seventh Circuit, sitting *en banc*, resolved the central, basic and important question presented by this case.

Although the Court below properly found no need to explore other extraneous issues raised by the Board, the recital of some additional facts is necessary for purposes of clarification here of certain allegations made by the Board and Union in their briefs.

1. The employees and local unions herein involved deemed the 1955-58 Company/union labor agreements (the first to contain a full union shop pro-

¹ The International Union (Brief, pp. 13-14) now asserts that such a threat would not have been enforced under the constitution, claiming that the maximum any employee would be fined is \$100. The report of the local union trial committee (R. 49) leaves no doubt that it believed a \$100 per day fine was possible and the trial committee considered imposing larger fines. The Union's current rationale on this point represents an approach which must come as a surprise as much to the Local Union as to the threatened employees.

² *Auto Workers, Local 756 v. Woychik*, 5 Wis. 2d 528, 93 N.W. 2d 336.

vision) to require *all* nonmembers to become members. (R. 56, 58, 62) In the state court collection case against Benjamin Natzke counsel for Local 248 was willing to stipulate that the defendant Natzke "became a member of the plaintiff union because it was required as a condition of employment." (R. 55) Even where previous non-members, pursuant to the union shop provision, executed only an authorization for check-off of dues, Local 248 treated them as having applied for and having obtained full regular union membership. (R. 57, 60)

2. On August 13, 1958, Local 248 called a meeting and conducted a vote which was then described at the meeting by union officials as a "vote of confidence." (R. 64, 67) At this meeting union officials expressly assured the persons in attendance that the vote was *not* a vote for strike action, and that *before* strike action was taken this question would again be referred to the membership. (R. 64, 67) In November, 1958 Local 248 reaffirmed by means of a written negotiations bulletin the oral statements made at the August 13, 1958 meeting as follows:

"BLANK CHECK STRIKE AUTHORITY
"This is a good example of the 'Big Lie'. The
membership of Local 248 did NOT give ANY-
ONE. a blank check! The minutes of the
August 13th Strike Vote will bear this out.
President Merten told the membership, at this
meeting, that before strike action was taken the
members would be called together to make the
decision.

"Further—The International Executive Board
CANNOT CALL A STRIKE! They can au-
thorize only: THE LOCAL UNION MEM-
BERSHIP will be given the opportunity to
make the final decision." (R. 78)

Despite these oral and written representations, the union leadership declared a strike to commence at 11 A.M. on February 2, 1959, and without a prior vote. (R. 68) At a membership meeting immediately following the commencement of the strike, a microphone was cut off when a member attempted to speak from the floor. (R. 69)³

3. A guide as to why the union fined these employees rather than expelling them from the union may be found in the remarks of the Union counsel at the hearing before the Board Trial Examiner:

"MR. RASKIN: Now we know and we are not naive about these matters, that where there are requirements for union membership as the condition of employment, unfortunately and that even is true where there are no requirements of union membership as the condition of employment — unfortunately the great mass

³ An earlier Allis-Chalmers proceeding before the Board reviewed the types of problems sometimes faced by employees in union strike votes:

"At the West Allis plant Local 248 of the United Automobile Workers Union, C.I.O. (UAW) was recognized by the Company in 1937. The evidence here is that thereafter dictatorial control, undemocratic practices, and subversive aims of the local's leadership deprived the rank-and-file of genuine trade union representation and effective voice in the local's affairs. The testimony is that a bitter strike in 1941 was, at least in part, in pursuance of and a result of these aims and practices of the leadership. There were other abuses, as well.

"The Wisconsin Employment Relations Act required a favorable vote by employees before calling of a strike. A vote was taken by Local 248 officers prior to the 1941 strike and the result announced as overwhelmingly in favor of striking. In a subsequent investigation, however, the Wisconsin Employment Relations Board found that there had been wholesale forgery of ballots and directed a new strike election.

"In 1946, during contract negotiations, another strike vote was taken by Local 248, and announced as carried, under circumstances which, the evidence indicates, cast considerable doubt on the probity of the stated result. Ultimately that strike was terminated by the execution of a new contract."

106 NLRB 939, at 958.

of workers take little interest in union affairs. This unfortunate situation probably is no different than in any other fraternal group. The attendance record at membership meetings is low. The great interest in keeping alive the union status is maintained usually by a handful of people. Therefore the imposition of a sanction such as, 'You are no longer a member of this union,' means nothing and is of no consequence and probably could well be a relief to some people because it wouldn't make it necessary for them even to so much as come up to a union meeting at all." (R. 1)

QUESTION PRESENTED

Whether a union which threatens to fine and fines employees who are members of such union for refraining from engaging in an economic strike by working for the employer during such strike, and institutes court action to collect such fines, thereby restrains or coerces employees in the exercise of a right guaranteed by Section 7 of the National Labor Relations Act, in violation of Section 8(b)(1)(A) of the Act.

ARGUMENT

I

INTRODUCTION AND SUMMARY

In this case the National Labor Relations Board and the intervening union urge that unions, by threat of confiscatory fines, may coerce individual employee-members into abandoning rights guaranteed by the National Labor Relations Act.

Congress did not give unions such authoritarian power nor should unions want it. Congress expressly protected

employees against such coercion. This was the whole purpose of the Taft-Hartley amendments which introduced into our labor laws the concept of *union* unfair labor practices infringing upon *employee* rights.

As the majority below stated (R. 103):

"Study of the Taft-Hartley legislative history as a whole reveals a clear Congressional intent to balance the national labor policy by placing limitations on coercive union conduct similar to those previously prescribed for employers."

In this case the right involved was that of refraining from striking. In other recent cases the right involved was that of producing up to one's capacity in violation of unilateral union production ceilings.⁴ Other recent cases involve the right of resorting to the processes of the Act.⁵ Whatever the right involved in a particular case, the exercise of the statutory right by the employee must be protected from union coercion.

Here the threatened fine was a confiscatory \$100 per day. The evil, however, is not to be measured, as the union contends, by the amount of any fine ultimately imposed. Where the coercive threat (which must be measured at the time it is made) accomplishes its intended purpose and the individual abandons the exercise of the subject right, no fine ever results. The coerced abandon-

⁴Local 283, *Auto Workers (Wisconsin Motors Corp.)*, 145 NLRB 1097, petition for review pending, 7th Cir.; *Bay Counties District Council of Carpenters (Associated Home Builders)*, 145 NLRB 1775, remanded for further proceedings, 352 F. 2d 745.

⁵Local 138, *Operating Engineers (Charles S. Skura)*, 148 NLRB 679; *Roberts, H. B., Business Manager of Local 925, Operating Engineers (Wellman-Lord Engineering, Inc.)*, 148 NLRB 674, enforced *sub nom. Roberts v. NLRB*, 350 F. 2d 427.

ment becomes a quietly accomplished fact and there the matter ends.

The elements of the statutory violation here are, in every respect, obvious, and are indeed conceded by the Board. It is well established, and acknowledged: that Section 8(b)(1)(A) is not restricted or limited to any specific category of activity so as to exclude employee rights at times of economic strike; that union fines generally, and these particularly, are coercive; that the protection of the statute extends to union members as well as non-members; and that working during an economic strike is a Section 7 protected activity. See pp. 13-17, *infra*.

In the face of this, the inexorable conclusion is that the union coercions in this case were a clear violation of the statute. To avoid this conclusion the Board offers only the diffuse reply that the statute is aimed "primarily" at violence and threats of job loss, "principally" in organizing campaigns, and the unpersuasive negative proposition that it is not shown that Congress intended to restrict such "traditional" union techniques as fining. The unavoidable, and logical consequence of the concessions made as to the well-settled elements of this offense cannot so blithely be avoided.

The majority decision of the National Labor Relations Board, as well as the dissenters below, reveal a common refusal to accept the law as enacted because of policy considerations as to what in their view it ought to be.

The Board and Union would interpret the statute as though its purpose were to secure to unions some guarantee of effectiveness in concerted activities, and some assurance of advancement of union-determined goals through the vehicle of a close-ranked membership even though at the expense of each member's option to re-

frain from any or all concerted activities. See pp. 17-23, *infra*.

This is an unsupportable negation of the Congressional purpose in enacting Taft-Hartley, which in its object and every amendment subordinated the interests of the union as an entity to the interest in protecting the free exercise of individual options from intimidating union coercion.

Policy arguments advanced now by the Board were expressly advanced in the legislative debate, for example by Senator Pepper, a leading spokesman for these views. These arguments were directly rejected by Congress. Pursuing the example, Senator Pepper voted with the minority on every significant vote. See p. 18, *infra*.

The majority below did not feel so free to ignore the fundamental policy decisions that had evolved from an intensive legislative struggle:

"If the Congress did not mean to say what Congress has so clearly said, then Congress itself must indicate that fact by legislative enactment. This Court should not attempt to change the plain wording of this statute by judicial interpretation." (R. 103)

In their resort to the legislative history the Board and the dissenters below lost sight of the forest because of the trees. They would have us believe that a Congress intent on balancing the national labor policy

- carefully locked the front door by preventing unions from using threat of job loss as a means for coercing membership subservience, but deliberately left the back door wide open by permitting threat of a confiscatory fine potentially many times daily earnings.
- outlawed the more blatant physically violent form of coercion against crossing the picket line and working, but permitted the more sophisticated but equally

— if not more — effective form of coercion of a confiscatory fine threat.

Ascribing such shallow exercises in futility to a very determined Congress is quite unrealistic. The whole range and tone of the legislative history confirms the intent of Congress to eliminate repressive union tactics against employees exercising their right to refrain from particular union activities. See pp. 24-29, *infra*.

Senator Taft made this crystal clear in the debates when he said :

"The effect of the pending amendment is that the Board may call the union before them, exactly as it has called the employer, and say, 'Here are the rules of the game. You must cease and desist from coercing and restraining the employees who want to work from going to work and earning the money which they are entitled to earn.' The Board may say, 'You can persuade them; you can put up signs; you can conduct any form of propaganda you want to in order to persuade them, but you cannot, by threat of force or threat of economic reprisal, prevent them from exercising their right to work.' " Leg. Hist. 1206

The Board departs from the clear language and purpose of the statute in favor of its own views on certain policy questions. Yet these same views were debated and rejected by Congress and the Board has utterly failed to demonstrate why they should be resurrected here. The issue of policy here can be stated simply. The individual employee seeks to exercise the right recognized by Congress to work when he chooses. The union claims the privilege of overriding this fundamental individual choice through coercive fines that compel obedience regardless of the consequences to the individual. The sole justification claimed for such a drastic privilege is the

interest in preserving union solidarity. Yet there has been no showing that such a drastic technique is necessary or even appropriate to accomplish this purpose.⁶ Nor has there been a showing that this objective justifies overriding the basic right of the individual to earn a living as he chooses.⁷

The majority below is supported by decisions in other circuits. In *Leeds & Northrup Co. v. NLRB*, 357 F. 2d 527 (1966) the Court of Appeals for the Third Circuit said:

"But to equate union fines with total wages earned by a non-striking employee is the grossest form of economic coercion affecting not only the union membership status but also the relationship between the employee and his employer in violation of the Act. Such economic coercion is calculated in design and effect to force an employee to act in concert with the union in future labor-management strife." 357 F. 2d at 536.

See also *Associated Home Builders of the Greater East Bay, Inc. v. NLRB*, 352 F. 2d 745 (1965) where the Court of Appeals for the Ninth Circuit analyzed the problem of union fines consistently with the approach adapted by the majority here but where the case turned on a different section of the statute.

The Court of Appeals for the District of Columbia has likewise found union fines to be violative of Section 8(b)(1)(A) of the Act. *Roberts v. NLRB*, 350 F. 2d 427 (1965). See pp. 29-31, *infra*.

⁶See the careful analysis of the policy issues of this case in 80 Harvard L. Rev. 683 (Jan. 1967).

⁷Compare the recent decisions of this court confirming the supremacy of individual rights over the compulsion of a governing majority in the fields of criminal procedure and racial discrimination.

With respect to the consequence of the union shop agreement, the argument is now put forward that full union membership with subservience to all union policies is in no way required of employees, particularly not by union shop agreements. This position is directly contrary to the position the unions have previously asserted against the employees here involved.

Historically the unions involved in this case have taken the position that the union shop agreements here do require full union membership. This position was theirs when the subject union shop agreements first became effective in 1955. This view was pressed by the unions in the state court pilot suit to establish a right to collect the fines. It is only now, at this late date, that the argument is advanced that something less than full membership is all that has ever been required. In any event, the stipulation in this case is that all employees were union members pursuant to the union shop agreement. (R. 26)

Whatever the consequence of the union shop agreement, there is no warrant for the view that a union member, whether "voluntary" or "involuntary," loses the statutory protection against union coercion. See the excellent analysis of this issue in 80 Harv. L. Rev. 683, 685-687 (Jan., 1967).

To permit coercive union fines where a union shop agreement is in effect would defeat the careful Congressional limitations on compulsory union membership. It would present the anomaly of continuing to recognize the Act's prohibition against threats of job loss for failure to join in a strike, while purporting to justify threats of fines which could confiscate earnings and more. See pp. 31-33, *infra*.

But two points remain, the relevance of certain Labor-Management Reporting and Disclosure Act of 1959 pro-

visions and the Board's and intervening union's concern that the decision below would inhibit union disciplinary action against members engaging in wildcat or unauthorized strikes.

As to the first point, both the Board and the intervening union rely upon the proviso to Section 101(a)(2) in Title I of the L.M.R.D.A. of 1959.

This reliance is misplaced. The proviso is appended to the Act's guarantee of free speech and assembly to union members and has nothing to do with the exercise of rights guaranteed under Section 7 of the Labor-Management Relations Act. This is confirmed by the fact that in both Section 103 of Title I and in Section 603(b) of Title VI of the L.M.R.D.A. of 1959 Congress meticulously spelled out that nothing in the L.M.R.D.A. of 1959 "shall limit the rights and remedies of any member of a labor organization" or "impair or otherwise affect the rights of any person" under the National Labor Relations Act, as amended. See p. 34, *infra*.

The short answer to the second point is that the decision below would in no way prohibit a union in dealing as it might choose with members who participated in a wildcat or an unauthorized strike, since such conduct is not an activity protected by the Act. In any event, the orthodox response to such activity, when required, is employer action. On both points, see, for example, *NLRB vs. Draper Corp.*, 145 F.2d 199 (4th Cir.):

"we are of the opinion that the 'wild cat' strike in which the employees were engaged and for which they were discharged was not such a concerted activity as falls within the protection of section 7 of the National Labor Relations Act. . ." 145 F.2d at 202.

The statute is clear both in its language and purposes. The decision of the Court of Appeals *en banc* should be affirmed.

II

THE BOARD CONCEDES ALL THE ELEMENTS OF THE STATUTORY VIOLATION

The statute prohibits restraint and coercion of an employee in the exercise of a Section 7 right. A union fine is clearly coercive and the right to refrain from a strike is the exercise of a Section 7 right. The violation is apparent and the Court below so found:

"If Congress did not mean to say what Congress has so clearly said, then Congress itself must indicate that fact by legislative enactment. This Court should not attempt to change the plain wording of this statute by judicial interpretation." (R. 103)

The Board, however, would have us ignore the plain meaning of the statute and turn solely to their strained reconstruction of legislative history and policy. The statute cannot so easily be ignored. As this Court said in *Local 1976, United Brotherhood of Carpenters & Joiners of America AFL v. NLRB*, 357 U.S. 93:

"The problem raised by these cases affords a striking illustration of the importance of the truism that it is the business of Congress to declare policy and not this court's. . . . Because of the infirmities of language and the limited scope of science in legislative drafting, inevitably there enters into the construction of statutes the play of judicial judgment within the limits of the relevant legislative materials. Most relevant, of course, is the very language in which Congress has expressed its policy and from

which the court must extract the meaning most appropriate." 357 U.S. 93 at 100.⁸

The Board has quite obviously turned to its policy arguments because it has been forced to concede all the elements of the statutory violation. And yet having conceded all the elements the Board concludes that there has been no violation. Such a result cannot be sustained.

The Board briefly contends for a restrictive view of Section 8(b)(1)(A) based upon *National Labor Relations Board v. Drivers Local No. 639 (Curtis Bros.)*, 362 U.S. 274.⁹ But the Board acknowledges that 8(b)(1)(A) is not limited to organizational tactics or violence but that it can reach broadly into a variety of other matters. See Brief for the Board, p. 9, footnote 9; p. 25, footnote 15.

Further, the Board concedes that union fines are by nature coercive and may constitute restraint and coercion within the meaning of Section 8(b)(1)(A). See Brief for the Board, p. 8, footnote 8; p. 33, footnote 24.¹⁰ Surely

⁸ This case is also highly significant for its resolution of the tension between specific statutory guarantees and conflicting private agreements. With respect to the effect of hot cargo agreements upon the secondary boycott regulation under Section 8(b)(4)(A) the Court held that the statute guaranteed freedom of choice at the time of a concrete situation calling for the exercise of judgment on a particular matter of policy notwithstanding a prior conflicting collective bargaining agreement. See 357 U.S. 100, 105-106. Similarly, here the preexisting general union membership obligation in no way restricts the freedom of choice guaranteed by the statute at the time a concrete decision is faced whether to join in or refrain from specific concerted activities.

⁹ Even the most restrictive reading of the *Curtis* case does not support the Board argument, for that decision specifically recognized that Section 8(b)(1)(A) reached "particularized threats of economic reprisal." 362 U.S. at 287. The majority below relied upon this construction. (R. 100)

¹⁰ The coercive nature of union fines has also been established by decisions interpreting §8(b)(4)(A) of the Act. Building and Construction Trades Council of Los Angeles, 162 N.L.R.B. No. 55.

there can be no dispute as to the coercive effect of the threatened fine of \$100 per day disclosed by the record here.¹¹

The Board further concedes that union members as well as non-members are protected against coercion under Section 8(b)(1)(A). See Brief for the Board, p. 30, footnote 19. Senator Taft specifically highlighted this point in the debate on Section 8(b)(1)(A) when he said:

"If there is anything clear in the development of labor union history in the past ten years, it is that more and more labor union employees have come to be subject to the orders of labor union leaders. The Bill provides for the right of protest against arbitrary powers which have been exercised by some of the labor union leaders. Certainly it seems to me that if we are willing to accept the principle that employees are entitled to the same protection against labor union leaders as against employers, then I can see no reasonable objection to the amendment proposed by the Senator from Minnesota. [Section 8(b)(1)(A)]" Leg. Hist. p. 1028.

¹¹ The union brief attempts to minimize the extent of the coercion, but it has long been established that the Act is concerned with the tendency to coerce and not specific evidence of coercion. "It is immaterial that this conduct failed to deter the non-striking employees from returning to work. It was reasonably calculated to accomplish that end, and its inefficacy in this particular instance is no defense to the charge that it was violative of the Act." *International Longshoremen's & Warehousemen's Union*, 79 NLRB 1487, 1505. "That these tactics may have been ineffective in restraining non-striking employees from exercising the right to work if they so desired does not render the conduct any less violative of the Act." *Local 761, International Union of Electrical, Radio & Machine Workers*, 126 NLRB 123, 125. Moreover, the union claim that the coercion is eliminated because of the availability of court review proceedings conveniently ignores the fact that the state courts have upheld the enforcement of such fines. The availability of the state court collection process, far from eliminating coercion, in fact is a major element in making the coercion effective.

Thus there can be no support for the view that by joining the union the employee has somehow diminished his statutory right.¹²

Finally, the Brief for the Board concedes that union members who work during a strike are exercising a protected right under the Act:

"If the Union had attempted to prevent the defecting members from crossing the picket line by threatening them with physical harm or with a loss in employment benefits (after the strike ended), the Union would have violated Section 8(b)(1)(A)." Brief for the Board, p. 30 and cases there cited.

This right is too firmly settled to be disputed. As Senator Taft observed in his analysis of the conference agreement on the Act:

"[T]he House conferees insisted that there be express language in Section 7 which would make the prohibition contained in Section 8(b)(1) apply to coercive acts of unions against employees who did not wish to join or did not care to participate in a strike or a picket line." Leg. Hist. 1623.

Nor does the protection of this right in any way interfere with the right to strike which is guaranteed by the Act. Senator Taft expressly covered this point during the debates on Section 8(b)(1)(A) when he said:

"The effect of the pending amendment is that the Board may call the union before them, exactly as it has called the employer, and say, 'Here are the rules of the game. You must cease and desist from coercing and restraining the employees who want to

¹² It is thus clear that an employee who joins a union but exercises his right to refrain from striking is not seeking to join the union "on his own terms" as claimed by the union and the Board. He is, rather, joining on the terms guaranteed by Congress, namely, that in joining the union he may still retain the right to refrain from a strike and work at his regular job.

work from going to work and earning the money which they are entitled to earn.' The Board may say, 'You can persuade them; you can put up signs; you can conduct any form of propaganda you want to in order to persuade them; but you cannot, by threat of force or threat of economic reprisal, prevent them from exercising their right to work.' . . . Mr. President, I can see nothing in the pending measure which as suggested by the Senator from Oregon, would in some way outlaw strikes. It would outlaw threats against employees. It would not outlaw anybody striking who wanted to strike. It would not prevent anyone using the strike in a legitimate way, conducting peaceful picketing, or employing persuasion. All it would do would be to outlaw such restraint and coercion as would prevent people from going to work if they wished to go to work." Leg. Hist. 1206-1207.¹³

The Board has conceded, as it must, that all of the elements of the statutory violation are present. The violation must be found.

III

NLRB VIEWS OF POLICY MAY NOT OVER- RIDE THE POLICY DETERMINATIONS MADE BY CONGRESS

The brief for the Board, while making a passing gesture at statutory analysis and legislative history, devotes its major thrust to questions of political policy. Throughout the argument we find repeated concern for the strength, effectiveness and vitality of labor unions. The virtues of majority rule are extolled without regard to the rights of the minority or the individual. The philosophy ex-

¹³ This legislative history has already been adopted by this Court in *N.L.R.B. v. Drivers, Local No. 639 (Curtis Bros.)*, 362 U.S. 274.

pressed is that the security of the union is the goal of national labor policy and that employees should be subject to union control requiring them to behave in the manner which best furthers the purpose of the union.¹⁴

The policy arguments advanced by the Board were also advanced in the legislative debates. Senator Pepper was a leading spokesman for the view that unions should and must have the power of coercion over their members. During the debates he stated, for example:

"We must balance one side against the other. By what policy do we do the greater good? My position is that it is necessary for the union to have some discipline if it is to be an effective organization to defend and protect the workers. . . . Remember that the worker is protected by the union's constitution and by-laws. Remember that the worker is presumed to have had a fair trial by his peers in the union." Leg. Hist. 1094.

But the philosophy expressed by Senator Pepper was overwhelmingly rejected by Congress. Senator Pepper was a member of the minority on every significant vote including in particular the adoption of Section 8(b)(1)(A). Leg. Hist. 1217. Now the Board has revived the philosophy which Congress has rejected.

¹⁴ The long-term strength, effectiveness and vitality of labor unions is undoubtedly better served if unions accomplish their purposes by persuasion (as permitted by Congress) rather than by coercion (as prohibited by Congress). When a union attempts to coerce employees into striking when they wish to work, it diminishes its strength and effectiveness and risks loss of its position as majority bargaining representative. Thus even if it were accepted that Congress sought to guarantee union security even to the extent of denying the right of an individual to work, there is reason to believe that the coercive union tactics shown here would hinder rather than further this purpose. As the Court below observed, "It is more important for the individual laboring man to be free and for his labor organization to be free than for any other segment of our society." (R. 102)

The Board has no authority to make such policy determinations. It is not the arbiter of the legislative policies underlying the Act. As this Court admonished the Board in *American Shipbuilding Co. v. NLRB*, 380 U.S. 300:

"... the Act's provisions are not indefinitely elastic, content-free forms to be shaped in whatever manner the Board might think best conforms to the proper balance of bargaining power." 380 U.S. at 310.

It is Congress and not the Board which has established the policies of the Act. This Court has identified those policies which are most relevant to the dispute here:

"It was the intent of Congress to impose upon unions the same restrictions which the Wagner Act imposed upon employers with respect to violations of employee rights." *International Garment Workers Union AFL-CIO v. NLRB*, 366 U.S. 731, 738.

"This legislative history clearly indicates Congress intended to prevent utilization of union security agreements for any purpose other than to compel payment of union dues and fees." *Radio Officers v. NLRB*, 347 U.S. 17, 41.

"[the purpose of Section 8(b)(1)(A) was] the elimination of the use of repressive tactics bordering on violence or involving particularized threats of economic reprisal." *NLRB v. Drivers, Local Union No. 639*, 362 U.S. 274, 286-7.

It is these policies which the Court below identified and applied. These policies lead inescapably to the conclusion that the coercive union fine imposed upon a member for exercising his statutory right to work during a strike constitutes an unfair labor practice under the Act.

The Board emphasis upon the union strike vote procedures and the alleged majority rule is of no assistance

in interpreting the Act.¹⁵ The statute applies to all unions and all employees. It does not distinguish between unions following one procedure or another or between strikes which are called in one particular manner or another. Rather it assures to employees the free choice whether to work or not to work regardless of what procedures are followed by a union in calling a strike and regardless of what the purpose of the strike may be.¹⁶ The statute recognizes that the only effective means to assure that union action is responsive to the will of those it represents, is to guarantee to each employee the free

¹⁵ To equate a union strike vote with "majority rule" is the height of naivete. A typical strike vote is not a secret ballot election based upon a full and fair exposition of *both* sides of the question. Nothing in the existing labor laws guarantees that a strike vote must be held and nothing guarantees that if a vote is held, it will be conducted in a manner which truly permits the employees to express a reasoned decision. On the contrary, the law leaves this question solely to the internal union procedures and it is illegal for an employer to insist that a secret ballot strike vote be held during bargaining negotiations. *N.L.R.B. v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342.

¹⁶ The excessive significance which the Board attributes to the strike vote ignores a critical element of timing. A strike vote is often nothing more than a show of strength during bargaining negotiations and may come long before the actual strike. (Compare the record here, R. 64, 67, 77-78.) Here the so-called strike vote of the members was merely an authorization for the leadership to call a strike later as bargaining progressed, and the actual strike came months later. (R. 72) The fact that a majority of employees may favor a strike before it is called is no justification for coercive fines to bind them irrevocably to a strike subsequently called by the union leadership, especially where the strike drags on for a lengthy period and circumstances change. Once having voted to strike the employees have no guarantee that they will have a chance to vote to terminate the strike unless their leaders so permit. A pre-strike vote offers flimsy justification for coercive fines designed to keep an employee from returning to work regardless of the length of a strike, his personal needs, or the risk that he will be permanently and lawfully replaced and lose his job.

choice whether to join or refrain from each particular concerted activity.¹⁷

The Board argument would subordinate the rights of the individual to the power of the organization. The fallacy of this approach was well expressed by Professor Archibald Cox as follows:

"The state alone cannot achieve true union democracy but it has much to contribute. Preserving democracy requires protecting individual and minorities against numerical majorities or an officialdom which acts with the majority's consent. It is not enough to put our trust in self-restraint."¹⁸

The concern expressed by the Board for rights of the union as an entity goes far beyond the protection expressed by the legislative scheme. Congress granted rights not to labor unions but to employees. Section 7 of the Act guarantees to employees the right either to engage in or refrain from "any or all" concerted activities. Section 8(b)(1)(A) was not enacted to further the effective functioning of the union but rather to protect the exercise of statutory rights by employees from restraint and coercion by labor unions.

The notion that the Taft-Hartley Act should be construed with regard for what makes a labor union a more "effective" collective bargaining representative is unsound. Extensive hearings had demonstrated that unions have woefully abused the rights of employees, employers

¹⁷ It should be noted that the record does not support the claims made as to the procedures followed by the union in calling the strikes. The record is silent as to certain of the strikes and the state court trial record as to one of the strikes makes it clear that there is substantial dispute as to the propriety of the strike vote procedures on that occasion. See Statement of the Case, pp. 3-4, supra.

¹⁸ Cox, Internal Affairs of Labor Unions under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 830 (1960).

and the public. This legislation sought to cure these abuses.

In a practical sense, the provisions of the Taft-Hartley Act made unions less effective bargaining agents. Obviously unions were more "effective" when they were free to coerce employees, when they were free to cause employers to discharge members no longer in good standing, when they had no obligation to bargain in good faith and when they were free to engage in unlimited secondary boycotts. The Taft-Hartley amendments sought to cure these abuses and this purpose must be controlling when the Act is interpreted.¹⁹

Congressional concern for the rights of the individual was not misplaced. Under the principle advocated by the Board an employee would face an intolerable dilemma. He may wish to refrain from a strike, either at the outset or later as circumstances change, for a variety of perfectly good reasons ranging from overwhelming personal financial problems to distrust that the union leadership was advancing personal political motivations or even subversive interests, a concern over mishandling of the strike vote procedure or simply a belief that there was no economic justification for the strike.²⁰ If the employee

¹⁹ Organized labor boycotted the Taft-Hartley hearings and labeled the legislation a "slave labor act." The President vetoed the Act and yet Congress persisted in its purposes to balance the national labor policy by prescribing limitations on union conduct in a manner already prescribed for employers and to outlaw union coercive techniques aimed at individual employee subservience. Against this background the Board now purports to find in the Act a Congressional purpose to give unions unlimited power to control employee action through fines.

²⁰ This Company is not unacquainted with such problems. From 1941 and throughout World War II many of the Company employees fought a bitter battle with a union leadership which continually thwarted the will of the members through a variety of devices including voting frauds that were ultimately reversed in the Courts. *Allis-Chalmers Workers' Union, Local 248 v. Wisconsin Employment Relations Board* (Wisconsin Circuit Court, 1941) 4 Labor Cases ¶60, 429. See also, Statement of the Case, p. 4, n. 3, *supra*.

goes on strike, he may be permanently replaced by his employer and lose his job,²¹ but at the same time the threat of coercive union fines which far exceed wages to be earned prevents him from going to work regardless of whether the strike is justified or unjustified and regardless of his need.

Congress knew that an employee could be forced to pay dues to a union to hold a job under a union shop agreement. Congress knew that universal union democracy was a yet unattained future goal. Congress knew that union leaders sometimes called and maintained strikes for reasons other than the best interests of their members, sometimes even deliberately to obstruct the free flow of commerce the Act seeks to foster. Congress knew that the law did not even require membership approval of a strike, and that even when unions purported to take strike votes there were often no opportunities for opponents of the leaders, even if a majority, to speak, to vote by secret ballot, or to determine the true outcome of the vote. Congress knew that every strike was not a holy crusade but that the best interests of the employees might be lost in the clash of competing unions and employers.

Knowing all these things Congress did not leave the individual defenseless. Congress said clearly and unmistakably in Section 7, Section 8(a)(3) and Section 8(b)-(1)(A) that except for union shop dues obligations an employee may refrain from any and all concerted activities and that no union could coerce him for doing so.

²¹ *NLRB v. Mackay Radio and Telegraph Co.*, 304 U.S. 333.

IV

THE LEGISLATIVE HISTORY CONFIRMS THE NATURAL MEANING OF THE STATUTE AS ENFORCED BY THE COURT OF APPEALS

The basic thrust of Section 8(b)(1)(A) has been reviewed above. And, as has been shown, the legislative history, as interpreted by this Court, confirms the intention of Congress to eliminate repressive union tactics aimed against employees who refrained from particular union activities.

The statute broadly proscribes all forms of restraint and coercion and no attempt was made to itemize particular forms. Nevertheless there is specific evidence that union fines were considered by Congress. In the final debate on the Act, Senator Wiley stated that the law was necessary and cited a number of abuses including the following:

"There are instances in which unions, because we have allowed them to do so, have imposed fines upon their members up to \$20,000 because they crossed picket lines—dared to go to the place of employment." Leg. Hist. 1471.

Moreover, during the hearings on the Taft-Hartley Act, Senator Ball, one of the proponents of Section 8(b)(1)(A) introduced into the record a number of letters complaining about union fine tactics and this portion of the record was specifically considered in the Senate Committee Report. Leg. Hist. 413.²²

²² See Hearings before the Committee on Labor & Public Welfare, U.S. Senate 80th Congress, First Sess., on S. 55 and S.J. Res. 22, pp. 2066-2069.

Letter from Mrs. Alice Gilmartin, 1334 Sellers Street, Philadelphia, Pa.

"... I have been there for 2 years and have never had cause to be

Fines covered by Section 8(b)(1)(A) are not exempted by the proviso to that section. The proviso by its terms relates only to "acquisition or retention of membership." The legislative history of the proviso confirms that it had this limited purpose. In introducing the proviso Senator Holland confirmed that it was directed at "that part of the internal administration which has to

dissatisfied in any way with the firm's head or foreman, but we are always going out on a strike or walkout or just talking. Now I refused to go on a strike and do picket duty so they sent me a letter to pay them \$100 and that I was also expelled from union. Later the shop steward came to me and said if I agreed to pay the \$100 I would be squared and even, and that they would take a little each week out of my pay . . . I am a widow with children and a home to support . . . I intend to fight until I cannot fight anymore. Just imagine paying someone so you can work for someone else and then have them order you out on a strike and fine you \$100 because you refuse to do their bidding . . ."

Letter from Mr. R. B. Nichols, The Tarring Co., South Bend, Ind.

" . . . We have just concluded a lengthy strike . . .

"During the strike period, the union levied fines on all members who refused to picket, with the result that several workers had fines of over \$100 per person which, when the strike was concluded, the union insisted they pay or sign notes to pay. Unfortunately, there are certain ex-servicemen involved in this matter who refuse to pay the fine, so cannot obtain clearance from the union and, therefore, will not be allowed to enter the plant.

"Can you visualize the hullabaloo that would be raised should an employer attempt to keep an employee from his job, particularly an ex-serviceman, and yet the union is perfectly free to resort to such tactics without interference . . ."

Letter from Mr. George S. Ward, Harlan, Ky.

" . . . In our contract with the Mine Workers there is a clause which sets up an arbitration board to handle all disputes . . . but it is becoming increasingly difficult for the employer to place a witness on the stand in his behalf, for the reason that the Mine Workers, I am informed, have notified all their members that they must not testify for the employer, and if they do, they are immediately fined \$25.

"I know of one such instance where a former checkweighman was fined \$25 by his local for testifying for the company, and in another instance a motorman testified for the company and he was cited to appear before the local union but instead he just quit his job."

do with the admission or the expulsion of members." Leg. Hist. 1139. He further stated:

"In other words, if accepted by the sponsors of the pending amendment, the inserted words would make it clear that the pending amendment would have no application to or effect upon the right of the labor organization to prescribe its own rules of membership either with respect to beginning or terminating membership." Leg. Hist. 1141.

During the debate on the union shop provisions concern had been expressed that the new provisions would interfere with the right of unions to select their own members. Senator Taft answered these fears as follows:

"Let us take the case of unions which prohibit the admission of Negroes to membership. If they prohibit the admission of Negroes to membership, they may continue to do so; but representatives of the union cannot go to the employer and say, You have got to fire this man because he is not a member of our union." Leg. Hist. p. 1096.

The legislative history and congressional purposes in this area are comparable to those reviewed in great detail with respect to the Railway Labor Act in the case of *International Association of Machinists v. Street*, 367 U.S. 740.

When the debate turned to Section 8(b)(1)(A) there was concern that the proposed amendment could reverse these commitments which had been made as to a union's right to select its own members. It was to prevent such an interpretation that the proviso to Section 8(b)(1)(A) was introduced by Senator Holland. This purpose of the proviso is highlighted by the following debate which immediately followed the introduction of the proviso:

"Mr. Pepper: Am I correct in assuming that it is the interpretation of the senator from Ohio and

the senator from Minnesota that there is no provision of the bill which denies a labor union the right to prescribe the qualifications of its members, and that if the union wishes to discriminate in respect to membership, there is no provision in the bill which denies it the privilege of doing so?

"Mr. Ball: Absolutely not. If the union expels a member of the union for any other reason than non-payment of dues, and there is a union shop contract, the union cannot under that contract require the employer to discharge the man from his job. It can expel him from the union at any time it wishes to do so, and for any reason."
Leg. Hist. 1142.

It is thus clear that the proviso was limited solely to questions of beginning and termination of union membership. Nothing in the legislative history of the proviso suggests that it was intended to validate union fine procedures. The Board itself in *Marlin-Rockwell Corporation*, 114 NLRB 553, 561 said:

"As we read the 8(b)(1)(A) proviso, its sole purport is to guarantee to unions the privilege, as a voluntary association, to determine both who shall be a union 'member' and what substantive conditions

a 'member' must comply with in order to acquire or retain union membership status."

Cases such as *International Typographical Union (American Newspaper Publishers Association)*, 86 NLRB 951 and *NLRB v. UAW*, 320 F. 2d 12 add nothing to the clear language of the proviso. Both deal with matters of membership status, the first a rule as to expulsion and the second a rule as to resignation from membership. Neither case has any bearing on the problem of union fines.²³

Union rules as to admission or expulsion of members have a limited scope. They are internal regulations which determine who may participate in union affairs. Court collectible fines reach beyond this internal relationship and seek to bind the individual to all union policies.

Congress accepted the view that a union did not have to extend the privileges of membership to those it found unacceptable but Congress gave no authority to unions to control the actions of members through unlimited

²³ A union fine as such was involved in one earlier case. In *Minneapolis Star & Tribune Co.*, 109 NLRB 727, the Board gave little attention to the union fine issue and summarily adopted an interpretation by the Trial Examiner which was based upon a gross distortion of the legislative history. It is significant that there was no suggestion in that case that the fine was judicially collectible or enforceable in any manner other than possible expulsion, and the Board rested its decision solely on the authority of the *I. T. U.* decision which as noted above was an expulsion case. The *Minneapolis Star* concept can be distinguished on the ground that the fines there were imposed for failure of a member to perform picket duties and attend union meetings. It may be argued that once a member has elected not to work, the question of picket duty and attendance at meetings is solely a matter of his obligations to the union and has no impact on his employment relationship. Since the Act as a whole deals with the employment relationship, it may be argued that the Section 7 right to refrain from concerted activities extends only to those activities such as striking or not striking which have an effect on the economic incidences of the employment relationship but does not extend to private obligations between the member and the union which do not affect employment as such.

financial sanctions.²⁴ Expulsion from the union is the only remedy consistent with the congressional purpose.²⁵

V

DECISIONS OF OTHER COURTS OF APPEALS SUPPORT THE DECISION HERE

The briefs for the Board and the union review numerous Court decisions dealing with issues peripheral to the central controversy here. More significant are the

²⁴ The argument that Congress must have permitted fines because it permitted expulsion is based upon the false premise that Congress permitted expulsion so that unions could control their members. There is no evidence of such a congressional purpose. Congress was concerned primarily with rights of individuals and conceded to unions, not union control of members, but only union authority to choose members and to remove dissidents from the union ranks. Congress simply acknowledged that unions would not be forced to accept or keep members they didn't want. Moreover, there is a distinct difference in quality between coercive fines and possible expulsion. When faced with the threat of a judicially enforceable fine of \$100 per day an employee is left no reasonable choice. On the other hand, when faced with expulsion he may weigh the benefits of union membership against the benefits of working during the strike and make a free choice. In the argument before the Trial Examiner the counsel for the union candidly admitted that loss of membership may not be an effective sanction and that fines were. (R. 1) The Board itself has recognized that as to employees in certain circumstances "... loss of membership was of no significance to them; consequently their expulsion from the union could hardly be an effective deterrent ...". *Tawas Tube Products, Inc.*, 151 NLRB 46, 49.

²⁵ As noted above, the Board has conceded that the proviso has no application to union fines in cases such as *Local 138, Operating Engineers (Charles S. Skura)*, 148 NLRB 679. More recently the Board has held the proviso inapplicable even to a union expulsion. *Cannery Workers Union (VanCamp Seafood Co.)*, 159 NLRB No. 47. Thus the Board has abandoned any pretense of interpreting Section 8(b)(1)(A) and its proviso with reference to the union tactics involved. Rather, the Board looks to the purpose of the union coercion as the sole determinant. Such an approach totally abandons any reference to the statutory language.

three recent decisions of other Courts of Appeals which have considered the legality of union fines under Section 8(b)(1)(A) and have reached decisions in harmony with the decision of the Court of Appeals here.

In *Robertis v. NLRB*, 350 F. 2d 427 (1965) the Court of Appeals for the District of Columbia ruled that an unfair labor practice under Section 8(b)(1)(A) had been committed where a union imposed a fine upon a member because that member had previously filed NLRB charges with respect to another matter. This ruling of the Court of necessity confirms that a union fine is a coercion within the meaning of the statute, that the exercise of a statutory right is protected against such coercion, and that membership in a union does not deprive an individual employee of the statutory protection against this form of coercion.

More recently the Court of Appeals for the Third Circuit considered this issue in the case of *Leeds & Northrup Company v. NLRB*, 357 F. 2d 527 (1966). In ordering the Board to conduct a full hearing on all issues including questions of union fines, the Court made the following comment concerning union fines imposed upon employees who refrained from a strike:

"But to equate union fines with total wages earned by a non-striking employee is the grossest form of economic coercion affecting not only the union membership status but also the relationship between the employee and his employer in violation of the Act. Such economic coercion is calculated in design and effect to force an employee to act in concert with the union in future labor-management strife. Congress has imposed strict limitation on compulsory unionism, and the Supreme Court has determined the obligation of union membership to be confined solely to the payment of dues." 357 F. 2d at 536.

Another variation of the same theme is found in the decision of the Court of Appeals for the Ninth Circuit in *Associated Home Builders of the Greater East Bay, Inc. v. NLRB*, 352 F. 2d 745 (1965) dealing with the validity of union fines imposed upon employees for alleged violations of a union-imposed rule limiting individual productive output. While the Court ultimately left the Section 8(b)(1)(A) issue unresolved in favor of a different approach to the problem, its extensive review and analysis of the problem is consistent with the approach adopted by the Court of Appeals for the Seventh Circuit in the instant case.

VI

THE EXISTENCE OF THE UNION SHOP AGREEMENT HEIGHTENS THE CO- ERCIVE EFFECT OF THE UNION ACTION

Whether or not a union shop exists an employee retains the freedom of choice guaranteed by Section 7. As demonstrated above, a union member is protected against the coercion of union fines whether he is a "voluntary" or an "involuntary" member.²⁰ However, the existence of a union shop agreement with its requirement of financial support increases the pressures on the employee to join the union and Congress expressly limited coercive misuse of this device.

In the case of *Radio Officers v. Labor Board*, 347 U.S. 17 this Court ruled that the protection of the Act extends not only to the question of joining or not joining the union, but also permits employees to be "good, bad or indifferent members." 347 U.S. at 40. With particular

²⁰ The fallacy of the supposed voluntariness of union membership and the irrelevance of this concept to a resolution of the present issues is well analyzed in 80 Harvard L. Rev. 683, 685-687 (Jan. 1957).

reference to the effect of union security agreements the Court said:

"This legislative history clearly indicates Congress intended to prevent utilization of union security agreements for any purpose other than to compel payment of union dues and fees." 347 U.S. at 41.

The approach of the Board would have the anomalous result of permitting the union unlimited power to coerce members by confiscatory fines, while at the same time the Board recognizes that the statute prohibits union coercion of membership subservience under a union shop by threat of job loss or any other detriment to the employment status. The congressional safeguards upon compulsory unionism cannot so easily be bypassed.²⁷

The union contends that the union security agreement merely required the payment of dues and initiation fees and that the employee was not compelled to take the ill-defined further steps which would make him a "member" subject to the union fine power. Such a contention is far

²⁷ The Board here finds no illegality despite the crushing economic impact of a threatened fine of \$100 per day and yet the Board has repeatedly found violations of Section 8(b)(1)(A) in relatively minor economic impairment of incidental employment benefits including necessity for physical exams, rights to changes in shifts, and timing of payment of wages (*J. J. Hagerty, Inc.*, 139 NLRB 633), reduction of seniority (*Minneapolis Star and Tribune Co.*, 109 NLRB 727), standards in establishing seniority (*Pacific Intermountain Express Company*, 107 NLRB 837), right of promotion (*Bell Aircraft Corporation*, 101 NLRB 132; *Local Union No. 450, Operating Engineers*, 122 NLRB 564), right to welfare benefits (*J. J. Hagerty, Inc.*, 139 NLRB 633; *Local 140, Bedding, Curtain and Drapery Workers Union*, 109 NLRB 326; *Indiana Gas and Chemical Corporation*, 130 NLRB 1488; and *Local 229, United Textile Workers of America*, 120 NLRB 1700), protection against demotion (*Bell Aircraft Corp.*, 105 NLRB 755), jurisdiction to perform disputed work (*Rupp Equipment Co.*, 112 NLRB 1315), the right to a leave of absence (*Local No. 13366, District 50, United Mine Workers of America*, 117 NLRB 648), the right to have grievances processed (*NLRB v. Die and Toolmakers Lodge No. 113*, 231 F. 2d 298).

from clear from the applicable precedents. More important, it is a refinement which is undoubtedly lost upon the vast majority of employees who are subject to union security agreements and informed that they must become union members.²⁸

Section 8(a)(3) of the statute speaks in terms of "membership" in a labor organization and the precise limits of this concept have not been settled.²⁹ Whatever may be the obligations of an employee under a particular union security agreement, it is clear that the presence of such an agreement casts doubt on the nature of the membership and Congress prevented the misuse of such a "membership" by protecting employees' freedom of choice to refrain from specific concerted activities. See "Section 8(b)(1)(A) Limitations Upon the Right of a Union to Fine its Members", 115 U. of Penn. L. Rev. 47, 61-63 (November, 1966).

²⁸ It is significant that in the state court collection action the union repeatedly took the position that initiation into full membership was what the collective bargaining agreement required. See R. 55, 58-59. Practical experience would belie any suggestion that a union would freely permit employees to pay dues but refuse other incidents of membership. See also Brief For The New York Times Display Advertising Salesman Steering Committee, *Amicus Curiae*, pp. 13-15.

²⁹ Far from clarifying the limits of compulsory union membership, *NLRB v. General Motors Corp.*, 373 U.S. 734 merely finds that the "agency shop" is within the concept of "membership" required by the statute. The *General Motors* decision finds that the "agency shop" is permitted by the statute but nothing in the decision supports the union claims as to the complete voluntariness of union membership under a union shop agreement.

VII

**THE LABOR MANAGEMENT REPORTING AND
DISCLOSURE ACT OF 1959 HAS NO BEAR-
ING ON THE PRESENT CONTROVERSY**

Both the Board and the union rely upon the proviso to Section 101(a)(2) in Title I of the L.M.R.D.A. of 1959. This proviso is appended to a provision guaranteeing to union members the rights of freedom of speech and assembly. It has nothing whatsoever to do with rights guaranteed under Section 7 of the Labor Management Relations Act. Section 103 of Title I states:

"Nothing contained in this Title shall limit the rights and remedies of any member of a labor organization under any state or federal law or before any court or other tribunal, or under the constitution and by-laws of any labor organization."

Section 603(b) of the L.M.R.D.A. further provides that nothing in the Act should be construed "to impair or otherwise affect the rights of any person under the National Labor Relations Act as amended."

The L.M.R.D.A. was enacted to enlarge the protection of union members. It was directed at union abuses beyond those which had been corrected by the 1947 legislation. It supplements and in no way diminishes the force of the Taft-Hartley Act in restricting union coercions which restrain the exercise of employment rights under Section 7.

VIII

THE PROBLEM OF WILDCAT STRIKES IS IRRELEVANT TO THE PRESENT DISPUTE

The union contends that if it is unable to discipline those who refrain from striking it will likewise be unable to control wildcat strikes.³⁰ There is no warrant for such an assumption. The right asserted here to refrain from concerted activities by working during a strike does not imply the same protection for a wildcat strike contrary to union authorization. The right to refrain from a strike is clear from the legislative history and the applicable decisions of the Board and the Courts.³¹ However, wildcat strikes enjoy no such protection. Since wildcat strikes disrupt the free flow of commerce in a manner which Congress sought to prevent, it is established that a wildcat striker is not deemed to be exercising a protected right under Section 7. See Brief for the Board, p. 13.

The wildcat strike is analogous to the problem here only in the sense that in each case individuals are acting contrary to the union dictate. However, this does not establish that in each case the individuals are exercising the same statutory right. Consistent with the purpose to avoid undue obstruction to commerce, Congress recognized the right of the individual to work while others were striking but gave no protection to the individual

³⁰ The union concern for controlling wildcat strikes is specious. Typically, the employer rather than the union disciplines wildcat strikers. In any event the decision here implies no limitation on whatever disciplinary action a union might occasionally take with respect to wildcat strikes.

³¹ The logical consequence of the union position would be that employees who work during a strike are not regarded as exercising a protected right. The contrary has been conclusively established, See pp. 16-17, *supra*.

who sought to strike contrary to union authorization. The decision here implies no change in the established principles applicable to wildcat strikers.

IX CONCLUSION

The statute is clear. Both its language and legislative history confirm that a coercive union fine which inhibits the exercise of the right of an employee to refrain from a strike constitutes an unfair labor practice under the Act. The decision of the Court of Appeals *en banc* should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1945

NATIONAL LABOR RELATIONS BOARD, Petitioner

ALLIS-CHALMERS MANUFACTURING COMPANY
and INTERNATIONAL UNION, UAW AFL-CIO,
(Locals 248 and 401), Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF MEMORANDUM FOR THE COURT.

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Submitted: October 10, 1945.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1966

No. 216

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

v.

ALLIS-CHALMERS MANUFACTURING COMPANY,
and INTERNATIONAL UNION, UAW-AFL-CIO
(Locals 248 and 401), *Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

REPLY MEMORANDUM FOR THE UNION

The Company's Brief, resting chiefly on a "plain meaning" contention, is largely unresponsive to the four major points emphasized by the Union to this Court. Accordingly, only brief answer is required to the Company's *ipse dixit* that Taft-Hartley's general "restrain or coerce" clause expunged the time-honored union power to discipline members who have defaulted on their organizational responsibilities.

1. *Repetitive fines.* The Company relies heavily on a charge that the Union violated the Act in 1959 by its communication to the dissident members suggesting that they could be fined on a separate day-separate offense basis (R.

42). However, UAW Local 401—one of the two respondents before the Board—*never* suggested imposition of cumulative fines. And while Local 248 did inform its dissident members that their conduct subjected them to a fine “up to \$100 for each offense” and suggested that each day of violation “may well constitute a separate offense”, in the subsequent Local 248 disciplinary proceedings the \$100 limitation of the International Union’s Constitution was honored and *no* fine in excess of that sum was imposed, even on members who had worked on many days during the strike. During the 1962 strike it was thus obvious to members of both locals that \$100 was in fact—as the International Constitution specifies—the maximum fine imposable on a UAW member who defies an authorized strike for improved working conditions. Under these circumstances the Labor Board’s decision properly addressed itself exclusively to the \$100 fines actually levied, rather than to the earlier implication by one of the two UAW locals that more than that amount could have been imposed.

2. *Compulsory dues*. Choosing to ignore what this Court specifically stated in *NLRB v. General Motors Corp.*, 373 U.S. 734, 742, the Company continues blandly to assert that Allis-Chalmers employees were compelled to take the oath of union membership, though the Union-Company contract requires only the payment of dues. The Company (Br. p. 31) now suggests for the first time that the “requirement of financial support increases the pressures on the employees to join the union . . .” There is, however, a vast difference between compulsion to join and compulsion to pay, for the latter and present situation preserves the individual’s option, by refraining from joining the union, to avoid union norms and union discipline.

But even as concerns the more limited compulsion to *pay*, there are safeguards. In *Machinists v. Street*, 367 U.S. 740, and *Brotherhood v. Allen*, 373 U.S. 113, this Court sharply

limited compulsory exactions under the Railway Labor Act when employees object to expenditure of their union support payments beyond the area of collective bargaining. While the Court has not yet spoken in a case arising under the National Labor Relations Act, we believe that the *Street-Allen* principle equally applies there and protects Allis-Chalmers employees from having to fund union activities beyond the collective bargaining area. It also bears emphasis that no objection to paying their dues has been voiced by members of Locals 248 and 401. This new "compulsion" argument comes not from any member of the Union or Allis-Chalmers employee, but from the Company whose concern to limit the effectiveness of employee strikes speaks louder than its stalwart defense of intra-union individualism.

3. *Fines as "coercion"*. The Company's Brief (p. 7) urges that "union fines generally, and these particularly" are "*coercive*"—a characterization no less applicable to all legal sanctions—and glibly equates that term with the "*coercion*" which imports invidious duress. This verbal sleight-of-hand cannot, of course, obscure the unrefuted showing (Union Brief pp. 38-43) that labor union authority to discipline members by fines has been repeatedly upheld since the landmark 1867 ruling in *Master Stevedores' Association v. Walsh*. The Company's literalistic formula (Br. p. 13) that "a union fine is clearly coercive and the right to refrain from a strike is the exercise of a Section 7 right," merely begs the question in this case. That question is not whether union discipline as such is coercion; it is whether Congress sought to reach so far in 1947 by the general "restrain or coerce" clause as to prohibit unions from enforcing by traditional membership discipline the crucial organizational obligations their members have sworn to honor. The Company's damning of union fines adds nothing to the resolution of that central statutory question.

4. *Majority rule.* The Company apparently recognizes the weakness of its "discipline-coercion" equation, for it goes further to claim that Congress also forbade the underlying union norm which requires membership solidarity in such matters as the economic strike. The Company asserts (Br. pp. 20-21) that the statute assures employees—including union members—"free choice whether to work or not to work regardless of what procedures are followed by a union in calling a strike and regardless of what the purpose of the strike may be. The statute recognizes that the only effective means to assure that union action is responsive to the will of those it represents, is to guarantee to each employee [and member] the free choice whether to join or refrain from each particular concerted activity." The Company thus finally exposes the heart of its contention: that Congress has *secured to every member of a labor union the right to membership on his own terms, abiding only by those regulations and obligations which he may be inclined to honor.*

So revolutionary a reading of the statute is, we submit, wholly unwarranted. Without a shred of legislative evidence, the Court is asked to find that Congress expunged the principle of majority rule which has governed under our federal labor laws since the Wagner Act, and which from earliest days has been the cornerstone of our voluntary organization law.¹ This Court has quoted with favor

¹ The *organisational anarchy* which the Company urges Congress to have enacted in 1947 would wipe out the principle of *organisational allegiance* which has been thought to apply since the earliest days within our social institutions and associations. As long ago as 1872, in a case involving a religious association, this Court applied that principle in terms which precisely fit the present issue. In *Watson v. Jones*, 13 Wall. 679, at 728-729, the Court stated the guiding rule:

"The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controversial questions of faith within

the Congressional emphasis that majority rule in labor relations "is sanctioned by our governmental practices, by business procedure, and by the whole philosophy of democratic institutions." *NLRB v. A. J. Tower Co.*, 329 U.S. 324, 331. Congress and this Court have recognized repeatedly that minority interests in the matter of working rights must yield to the majority interest of the employees as democratically implemented by the collective bargaining representative. See, e.g., *J. I. Case Co. v. NLRB*, 321 U.S. 332; *Ford Motor Co. v. Huffman*, 345 U.S. 330. Ever since majority rule was made the norm in labor relations the individual's "right to work" on his own terms and time has been required to bow before the majority interest; it cannot now be revived by presuming a Congressional intention to bar within the union's own ranks the principle which the union may and must apply in representing all the employees.

5. "No-strike" and lockout cases. It is notable that the Company declines to answer *Rockaway News* and *American Ship*, where this Court has already ruled that both the Section 7 right to participate in a union strike and the Section 7 right not to participate must give way before larger collective and public interests protected by the Act. In *Rockaway News* (345 U.S. 71) the Court held that a union can waive by contract with the employer an individual worker's right to respect a picket line and refuse to work; even without the individual's acquiescence his "protected"

the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed."

right under Section 7 was subordinated to the collective interest. In like vein, this Court in *American Ship* (380 U.S. 300) held that the individual employee's "right to work" falls before the employer's right to lock out all his employees, or all his unionized employees, as a bargaining device to affect the union's contract demands; the necessary effective and balanced collective bargaining process of the statute was held to pre-empt the Section 7 right to refrain from a collective work stoppage. No different result can obtain here. *If the employer can bar work for all his employees the union can bar work by all its members.* It cannot be that the Act denies to unions as a bargaining device a work stoppage power reciprocal to the lockout authority of the employer, particularly when the union's authority is restricted to its *own members* who have sworn their allegiance. That the employer may now resort to the historic union weapon of work stoppage whereas the union is to be denied that power even over its own membership is too anomalous to command this Court's approbation.

6. *Wildcatting.* The Company steadfastly declines to recognize the salient difference between "unprotected" strikes while a contractual no-strike clause is in effect, and the "protected" strike on contract expiration—which unions could no longer control by membership discipline if the ruling below is affirmed. A most recent example underlines the necessity for union disciplinary power both during a contract and upon its expiration to control the critical question of strike participation and strike abstention. On February 15, 1967 a strike was commenced without the approval of the International Union by UAW Local 549 against the General Motors Corporation in Mansfield, Ohio. The Local maintained that the strike was lawful; the International Union determined that the strike breached both the collective bargaining contract and the Interna-

tional's Constitution. It ordered the Local's officers to terminate the strike but they refused to do so.

General Motors then sued the Local in the state courts for an injunction, and the International Union appeared in the case to inform the Court that it viewed the strike as unlawful. The Court quickly enjoined all picketing and violence, but the strike itself was permitted to continue.

Meanwhile, the International Union wrote to each of more than 2,700 members of the Local to emphasize that hundreds of thousands of their fellow-workers at General Motors would suffer shut-downs if the wildcat strike continued. And on February 21, 1967, the International's Executive Board ordered every officer of the Local to attend a Show Cause Hearing before it to determine whether under Article 12 Section 3 of the International's Constitution they should be removed from office and an administrator appointed to take over Local 549. At the hearing, held on February 22, 1967, the International finally succeeded in obtaining the agreement of the Local's officers to end the strike.

If the Union had not had the power to impose disciplinary sanctions upon the Local's officers and members, it would have been unable to end the strike and to prevent the layoff of thousands of UAW members. And certainly expulsion from the Union of the 2,700 members involved would have been a doubtful and drastic remedy, unnecessary to achieve the compliance which lesser discipline was able to effect. Yet that is exactly the inhibition upon union authority which the Court below has imposed (at least upon expiration of a "no-strike" clause) in its decision that union discipline of offending members is prohibited by the Taft-Hartley Act.

Perhaps the Congress has power to legislate so idiosyncratic a result. But until it does so, there is nothing

in the general terminology of the statute which supports the view that unions may no longer impose reasonable discipline on members violating their organizational responsibilities. The Labor Board's construction of the Act should accordingly be reinstated by reversal of the ruling below.

Respectfully submitted,

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(887-0)

SUPREME COURT OF THE UNITED STATES

No. 216.—OCTOBER TERM, 1966.

National Labor Relations
Board, Petitioner,
v.
Allis-Chalmers Manufac-
turing Company et al.

On Writ of Certiorari to the
United States Court of
Appeals for the Seventh
Circuit.

[June 12, 1967.]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question here is whether a union which threatened and imposed fines, and brought suit for their collection, against members who crossed the union's picket line and went to work during an authorized strike against their employer, committed the unfair labor practice under § 8 (b)(1)(A) of the National Labor Relations Act of engaging in conduct "to restrain or coerce" employees in the exercise of their right guaranteed by § 7 to "refrain from" concerted activities.¹

Employees at the West Allis and La Crosse, Wisconsin, plants of respondent Allis-Chalmers Manufacturing Company were represented by locals of the United Automobile Workers. Lawful economic strikes were

¹ The relevant provisions of §§ 7 and 8 (b)(1)(A), 29 U. S. C. §§ 157 and 158 (b)(1)(A), are

"Sec. 7. Employees shall have the right to . . . engage in . . . concerted activities . . . , and shall also have the right to refrain from any or all such activities"

"Sec. 8 (b). It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein"

conducted at both plants in support of new contract demands. In compliance with the UAW constitution, the strikes were called with the approval of the International Union after at least two-thirds of the members of each local voted by secret ballot to strike. Some members of each local crossed the picket lines and worked during the strikes. After the strikes were over, the locals brought proceedings against these members charging them with violation of the International constitution and bylaws. The charges were heard by local trial committees in proceedings at which the charged members were represented by counsel. No claim of unfairness in the proceedings is made. The trials resulted in each charged member being found guilty of "conduct unbecoming a Union member" and being fined in a sum from \$20 to \$100. Some of the fined members did not pay the fines and one of the locals obtained a judgment in the amount of the fine against one of its members, Benjamin Natzke, in a test suit brought in the Milwaukee County Court. An appeal from the judgment is pending in the Wisconsin Supreme Court.

✓ Allis-Chalmers filed unfair labor practice charges against the locals alleging violation of § 8 (b)(1)(A).²

² Two locals were involved, Local 248 at the West Allis plant, and Local 401 at the La Crosse plant. Although Allis-Chalmers' charges of unfair labor practices mentioned threats of fines as well as imposition of fines, the only proof that fines were specifically threatened during a strike consisted of a letter to strikebreaking West Allis members of Local 248 in 1959. As to the 1962 strike at West Allis and both the 1959 and 1962 strikes at La Crosse, mention of fines first occurred after the strikes were over. The threat of court enforcement of the fines was first made in 1960 in letters sent to fined members of Local 248 who had not paid their fines; the letter informed them of the outcome of a Wisconsin Supreme Court opinion holding fines enforceable, *UAW, Local 756 v. Woychick*, 5 Wis. 2d 528, 93 N. W. 2d 336 (1958). Local 401's test suit was brought after the 1962 strike.

A complaint issued and after hearing a trial examiner recommended its dismissal. The National Labor Relations Board sustained the examiner on the ground that, in the circumstances of this case, the actions of the locals, even if restraint or coercion prohibited by § 8 (b)(1)(A), constituted conduct excepted from the section's prohibitions by the proviso that such prohibitions "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." 149 N. L. R. B. 67. Upon Allis-Chalmers' petition for review to the Court of Appeals for the Seventh Circuit, a panel of that court upheld the Board's decision. Following a rehearing *en banc*, however, the court, three judges dissenting, withdrew the panel opinion, held that the local's conduct violated § 8 (b)(1)(A), and remanded to the Board for appropriate proceedings. 358 F. 2d 656. We granted certiorari, 385 U. S. 810. We reverse.

I.

The panel and the majority *en banc* of the Court of Appeals thought that reversal of the NLRB order would be required under a literal reading of §§ 7 and 8 (b)(1)(A); under that reading union members who cross their own picket lines would be regarded as exercising their rights under § 7 to refrain from engaging in a particular concerted activity, and union discipline in the form of fines for such activity would therefore "restrain or coerce" in violation of § 8 (b)(1)(A) if the section's proviso is read to sanction no form of discipline other than expulsion from the union. The panel rejected that literal reading. The majority *en banc* adopted it, stating that the panel "mistakenly took the position that such a literal reading was unwarranted in the light of the history and purposes" of the sections, 358 F. 2d 659, and holding that "The statutes in question present no ambi-

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guities whatsoever, and therefore do not require recourse to legislative history for clarification." *Id.*, p. 660.

It is highly unrealistic to regard § 8(b)(1), and particularly its words "restrain or coerce," as precisely and unambiguously covering the union conduct involved in this case. On its face court enforcement of fines imposed on members for violation of membership obligations is no more conduct to "restrain or coerce" satisfaction of such obligations than court enforcement of penalties imposed on citizens for violation of their obligations as citizens to pay income taxes, or court awards of damages against a contracting party for nonperformance of a contractual obligation voluntarily undertaken. But even if the inherent imprecision of the words "restrain or coerce" may be overlooked, recourse to legislative history to determine the sense in which Congress used the words is not foreclosed. We have only this Term again admonished that labor legislation is peculiarly the product of legislative compromise of strongly held views, *Local 1976, Carpenters Union v. Labor Board*, 357 U. S. 93, 99-100, and that legislative history may not be disregarded merely because it is arguable that a provision may unambiguously embrace conduct called in question. *National Woodworkers Assn. v. Labor Board*, — U. S. —, — to —. Indeed, we have applied that principle to the construction of § 8(b)(1)(A) itself in holding that the section must be construed in light of the fact that it "is only one of many interwoven sections in a complex Act, mindful of the manifest purpose of the Congress to fashion a coherent national labor policy." *Labor Board v. Drivers Local Union*, 362 U. S. 274, 292.

National labor policy has been built on the premise that by pooling their economic strength and acting through a labor organization freely chosen by the majority, the employees of an appropriate unit have the most effective means of bargaining for improvements in wages,

hours, and working conditions. The policy therefore extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees. "Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom he represents. . . ." *Steel v. L. & N. R. Co.*, 323 U. S. 192, 202. Thus only the union may contract the employee's terms and conditions of employment,³ and provisions for processing his grievances; the union may even bargain away his right to strike during the contract term,⁴ and his right to refuse to cross a lawful picket line.⁵ The employee may disagree with many of the union decisions but is bound by them. "The majority-rule concept is today unquestionably at the center of our federal labor policy."⁶ "The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." *Ford Motor Co. v. Huffman*, 345 U. S. 330, 338.

It was because the national labor policy vested unions with power to order the relations of employees with their employer that this Court found it necessary to fashion the duty of fair representation. That duty "has stood as a bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by

³ See *J. I. Case Co. v. Labor Board*, 321 U. S. 332; *Medo Photo Supply Corp. v. Labor Board*, 321 U. S. 678; *ILGWU v. Labor Board*, 366 U. S. 731, 737.

⁴ See *Mastro Plastics Corp. v. Labor Board*, 350 U. S. 270, 280.

⁵ See *Labor Board v. Rockaway News Co.*, 345 U. S. 71.

⁶ Wellington, *Union Democracy and Fair Representation: Federal Responsibility in a Federal System*, 67 Yale L. J. 1327, 1333 (1958).

the provisions of federal labor law." *Vaca v. Sipes*, 386 U. S. 171, 182. For the same reason Congress in the 1959 Landrum-Griffin amendments enacted a code of fairness to assure democratic conduct of union affairs by provisions guaranteeing free speech and assembly, equal rights to vote in elections, to attend meetings, and to participate in the deliberations and voting upon the business conducted at the meetings.

Integral to this federal labor policy has been the power in the chosen union to protect against erosion its status under that policy through reasonable discipline of members who violate rules and regulations governing membership.⁷ That power is particularly vital when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and "the power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent" ⁸ Provisions in union constitutions and bylaws for fines and expulsion of recalcitrants, including strikebreakers, are therefore

⁷ See, e. g., Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049 (1951); Philip Taft, *The Structure and Government of Labor Unions* (1954) 117-180; Taylor, *The Role of Unions in a Democratic Society*, *Selected Readings on Government Regulation of Internal Union Affairs Affecting the Rights of Members for the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare* 17 (1958) (hereafter *Selected Readings*); Clark Kerr, *Unions and Union Leaders of Their Own Choosing*, *Selected Readings, supra*, at 109.

⁸ Summers, *supra*, note 7, at 1049.

"Strikebreaking is uniformly considered sufficient reason for expulsion whether or not there is an express prohibition, for it undercuts the union's principal weapon and defeats the economic objective for which the union exists." Summers, *Disciplinary Powers of Unions*, 3 Ind. & Lab. L. Rev. 483, 495 (1950).

commonplace and were commonplace at the time of the Taft-Hartley amendments.⁹

In addition, the judicial view current at the time § 8 (b)(1)(A) was passed was that provisions defining punishable conduct and the procedures for trial and appeal constituted part of the contract between member and union and that "The courts' role is but to enforce the contract."¹⁰ In *Machinists v. Gonzales*, 356 U. S. 617, 618, we recognized that "this contractual conception of the relation between a member and his union widely prevails in this country" Although state courts were reluctant to intervene in internal union affairs, a body of law establishing standards of fairness in the enforcement of union discipline grew up around this contract doctrine. See *Parks v. Electrical Workers*, 314 F. 2d 886, 902-903.¹¹

⁹ National Industrial Conference Board, *The Union, The Leader, and the Members*, Selected Readings, at 69-71; Summers, *Disciplinary Powers of Unions*, 3 Ind. & Lab. L. Rev. 483, 508-512 (1950); *Disciplinary Powers and Procedures in Union Constitutions*, U. S. Dept. of Labor Bulletin No. 1350, Bur. Lab. Stats. (1963).

It is suggested that while such provisions for fines and expulsion were a common element of union constitutions at the time of the enactment of § 8 (b)(1), such background loses its cogency here because such provisions did not explicitly call for court enforcement. However the potentiality of resort to courts for enforcement is implicit in any binding obligation. Surely it cannot be said that the absence of a "court enforceability" clause in a contract of sale implies that the parties do not foresee resort to the courts as a possible means of enforcement. It is also suggested that court enforcement of fines is "a rather recent innovation." Yet such enforcement was known as early as 1867. *Master Stevedores Ass'n v. Walsh*, 2 Daly 1 (N. Y.).

¹⁰ Summers, *The Law of Union Discipline: What the Courts Do in Fact*, 70 Yale L. J. 175, 180 (1960).

¹¹ See generally, Chafee, *The Internal Affairs of Associations Not for Profit*, 43 Harv. L. Rev. 993 (1930); Note, *Judicial Control of Actions of Private Associations*, 76 Harv. L. Rev. 983 (1963); Cox,

8. N. L. R. B. v. ALLIS-CHALMERS MFG. CO.

To say that Congress meant in 1947 by the § 7 amendments and § 8 (b)(1)(A) to strip unions of the power to fine members for strikebreaking, however lawful the strike vote, and however fair the disciplinary procedures and penalty, is to say that Congress preceded the Landrum-Griffin amendments with an even more pervasive regulation of the internal affairs of unions. It is also to attribute to Congress an intent at war with the understanding of the union-membership relation which has been at the heart of its effort "to fashion a coherent labor policy" and which has been a predicate underlying action by this Court and the state courts. More importantly, it is to say that Congress limited unions in the powers necessary to the discharge of their role as exclusive statutory bargaining agents by impairing the usefulness of labor's cherished strike weapon. It is no answer that the proviso to § 8 (b)(1)(A) preserves to the union the power to expel the offending member. Where the union is strong and membership therefore valuable, to require expulsion of the member visits a far more severe penalty upon the member than a reasonable fine. Where the union is weak, and membership therefore of little value, the union faced with further depletion of its ranks may have no real choice except to condone the member's disobedience.¹² Yet it is just such weak unions for which the power to execute union decisions taken for the benefit of all

Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 835-836 (1960).

¹² "Since the union's effectiveness is based largely on the degree to which it controls the available labor, expulsions tend to weaken the union. If large numbers are expelled, they become a threat to union standards by undercutting union rates, and in case of a strike they may act as strikebreakers Therefore, expulsions must be limited to very small numbers unless the union is so strongly entrenched that it cannot be effectively challenged by the employer or another union." Summers, Disciplinary Powers of Unions, 3 Ind. & Lab. L. Rev. 483, 487-488 (1950).

employees is most critical to effective discharge of its statutory function.

Congressional meaning is of course ordinarily to be discerned in the words Congress uses. But when the literal application of the imprecise words "restrain or coerce" Congress employed in § 8 (B)(1)(A) produce the extraordinary results we have mentioned we should determine whether this meaning is confirmed in the legislative history of the section.

II.

The explicit wording of § 8 (b)(2), which is concerned with union powers to affect a member's employment, is in sharp contrast with the imprecise words of § 8 (b)(1)(A). Section 8 (b)(2) limits union power to compel an employer to discharge a terminated member other than for "failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership." It is significant that Congress expressly disclaimed in this connection any intention to interfere with union self-government or to regulate a union's internal affairs. The Senate Report stated:

"The committee did not desire to limit the labor organization with respect to either its selection of membership or expulsion therefrom. But the committee did wish to protect the employee in his job if unreasonably expelled or denied membership. The tests provided by the amendment are based upon facts readily ascertainable and *do not require the employer to inquire into the internal affairs of the union.*" (S. Rep. No. 105, 80th Cong., 1st Sess., 20, 1 1947 Leg. Hist. 426.) (Emphasis supplied.)

Senator Taft, in answer to protestations by Senator Pepper that § 8 (b)(2) would intervene into the union's internal affairs and "deny it the right to protect itself

against a man in the union who betrays the objectives of the union . . . ,” stated:

*“The pending measure does not propose any limitation with respect to the internal affairs of unions. They still will be able to fire any members they wish to fire, and they still will be able to try any of their members. All that they will not be able to do, after the enactment of this bill, is this: If they fire a member for some reason other than nonpayment of dues they cannot make his employer discharge him from his job and throw him out of work. That is the only result of the provision under discussion.”*¹³

Section 8(b)(1)(A) was under consideration when Senator Taft said this. Congressional emphasis that § 8(b)(2) insulated an employee’s membership from his job, but left internal union affairs to union self-government, is therefore significant evidence against reading § 8(b)(1)(A) as contemplating regulation of internal discipline. This is borne out by the fact that provision was also made in the Taft-Hartley Act for a special committee to study, among other things, “the internal organization and administration of labor unions” § 402 (3), 61 Stat. 160.

What legislative materials there are dealing with § 8(b)(1)(A) contain not a single word referring to the application of its prohibitions to traditional internal union discipline in general, or disciplinary fines in particular. On the contrary there are a number of assurances by its sponsors that the section was not meant to regulate the internal affairs of unions.

The provision was not contained in the Senate or House bills reported out of committee, but was intro-

¹³ 93 Cong. Rec. 4193, II Legislative History of the Labor Management Relations Act of 1947, 1097 (hereafter, Leg. Hist.).

duced as an amendment on the Senate floor by Senator Ball. The amendment was adopted in the House Conference Committee, without significant enlightenment from the report of that committee. The first suggestion that restraint or coercion of employees in the exercise of § 7 rights should be an unfair labor practice appears in the Statement of Supplemental Views to the Senate Report, in which a minority of the Senate Committee, including Senators Ball, Taft, and Smith, concurred. The mischief against which the Statement inveighed was restraint and coercion by unions in *organizational campaigns*. "The committee heard many instances of union coercion of employees such as that brought about by threats of reprisal against employees and their families in the course of organizing campaigns; also direct interference by mass picketing and other violence." S. Rep. No. 105, *supra*, at 50, I Leg. Hist. 456. Senator Ball proposed § 8(b)(1)(A) as an amendment to the Senate bill, and stated, "The purpose of the amendment is simply to provide that where unions, in their organizational campaigns, indulge in practices which, if an employer indulged in them, would be unfair labor practices, such as making threats or false promises or false statements, the unions also shall be guilty of unfair labor practices." 93 Cong. Rec. 4016, II Leg. Hist. 1018. Senator Ball gave numerous examples of the kind of union conduct the amendment was to cover. Each one related to union conduct during *organizational campaigns*.¹⁴ Senator Ball reiterated this purpose

¹⁴ 93 Cong. Rec. 4016-4017, II Leg. Hist. 1018-1021. Examples were given in debate of threats by unions to double the dues of employees who waited until later to join. It is suggested that this is no less within the ambit of internal union affairs than the fines imposed in the present case. But the significant distinction is that the cited examples necessarily concern threats against nonmembers designed to coerce them into joining, and are therefore further evidence of the primary concern of Congress with organizational tactics.

several times thereafter,¹⁵ including remarks added after passage of the amendment.¹⁶ The consistent thrust of his arguments was the necessity of controlling union conduct in organizational campaigns. Indeed, when Senator Holland introduced the proviso eliminating from the reach of § 8 (b)(1)(A) "the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership . . . ,"¹⁷ Senator Ball replied,

"I merely wish to state to the Senate that the amendment offered by the Senator from Florida is perfectly agreeable to me. *It was never the intention of the sponsors of the pending amendment to interfere with the internal affairs or organization of unions.*"¹⁸ (Emphasis supplied.)

After acceptance of the proviso, and on the same day as the vote on the amendment itself, Senator Ball said of the proviso: "That modification is designed to make it clear that we are not trying to interfere with the internal affairs of a union which is already organized. All we are trying to cover is the coercive and restraining acts of the union in its effort to organize unorganized employees."¹⁹

Another co-sponsor of the amendment, Senator Smith, echoed this purpose: "The pending measure is designed to protect employees in their freedom to decide whether or not they desire to join labor organizations, to prevent them from being restrained or coerced."²⁰

Senator Taft also initially confined his comments on the amendment to examples of organizational tactics.²⁰

¹⁵ 93 Cong. Rec. 4271, 4432, 4434, II Leg. Hist. 1139, 1199, 1203.

¹⁶ 93 Cong. Rec. A-2252, II Leg. Hist. 1524-1525.

¹⁷ 93 Cong. Rec. 4272, II Leg. Hist. 1141.

¹⁸ 93 Cong. Rec. 4433, II Leg. Hist. 1200.

¹⁹ 93 Cong. Rec. 4435, II Leg. Hist. 1204.

²⁰ 93 Cong. Rec. 4021-4022, II Leg. Hist. 1025-1027.

However, in debate with Senator Pepper, he suggested a broader but still limited application:

"If there is anything clear in the development of labor union history in the past 10 years it is that more and more labor union employees have come to be subject to the orders of labor union leaders. The bill provides for the right to protest against *arbitrary powers which have been exercised by some of the labor union leaders.*" (Emphasis supplied.)²¹

In reply to Senator Pepper's protest that union members can protect themselves against such "tyranny," Senator Taft stated, "[I] think it is fair to say that in the case of many of the unions, the employee has a good deal more of an opportunity to select his employer than he has to select his labor-union leader."²² Taft further observed that union leaders sometimes penalize those who vote against them. Senator Pepper then attempted to draw an analogy between union members and shareholders in a corporation, to which Senator Taft replied, "The Congress has gone much further in protecting the rights of minority stockholders in corporations than it has in protecting the rights of members of unions. *Even in this bill we do not tell unions how they shall vote or how they shall conduct their affairs . . .*"²³ Sen-

²¹ 93 Cong. Rec. 4023, II Leg. Hist. 1028.

See Summers, Disciplinary Powers of Unions, 3 Ind. & Lab. L. Rev., at 483: "It is significant that among the major changes made in the Wagner Act by the Labor-Management Relations Act of 1947 was the addition of sections purported to be aimed at protecting individual union members against undemocratic and corrupt leaders."

²² 93 Cong. Rec. 4023, II Leg. Hist. 1028.

²³ 93 Cong. Rec. 4024, II Leg. Hist. 1030. It was in the context of the quoted limiting statements that, in answer to Senator Ives' suggestion that the matter of union coercion should be further investigated, Senator Taft made the broad remark that "merely to require that unions be subject to the same rules that govern employers, and that they do not have the right to interfere with or

ator Pepper attempted twice to clarify the effect of the amendment on internal affairs, but Senator Taft answered only that the amendment applied to nonunion men as well.²⁴

It was one week after this debate between Senator Taft and Senator Pepper that § 8 (b)(1)(A) was enacted. There was no further reference in the debates to the applicability of the section to internal union affairs, by Senator Taft or anyone else, despite the repeated statements by Senator Ball that it bore no relationship to the conduct of such affairs. At one point, Senator Saltonstall asked Senator Taft to provide examples of the kind of union conduct covered by the section. Senator Taft responded with examples of threats of bodily harm, economic coercion, and mass picketing in organizational campaigns and coercion which prevented employees not involved in a labor dispute from going to work.²⁵ But any inference that Senator Taft envisioned

coerce employees, either their own members or those outside their union, is such a clear matter, and seems to me so easy to determine, that I would hope we would all agree." 93 Cong. Rec. 4025, II Leg. Hist. 1032.

²⁴ 93 Cong. Rec. 4023, 4024, II Leg. Hist. 1029, 1030. It is this colloquy to which the dissent apparently refers in its statement that in answer to Senator Pepper's charge that the amendment protected workers against their own leaders, "Senator Taft did not deny it." It may be more accurate to say that Senator Taft evaded the issue.

²⁵ 93 Cong. Rec. 4435-4436, II Leg. Hist. 1205-1206. The following statement of Senator Taft had no reference to the conduct of a union *vis-à-vis* a member who crossed the union's picket line but referred to union conduct in preventing employees not in the bargaining unit from going to work—"mass picketing, which absolutely prevents all the office force from going into the office of a plant":

"The effect of the pending amendment is that the Board may call the union before them, exactly as it has called the employer, and say, 'Here are the rules of the game. You must cease and desist from coercing and restraining the employees who want to work from going to work and earning the money which they are entitled to earn.' The Board may say, 'You can persuade them; you can put up signs; you can conduct any form of propaganda you want to

that § 8 (b)(1)(A) intruded into and regulated internal union affairs is negated by his categorical statements to the contrary in the contemporaneous debates on § 8 (b)(2).

It is true that there are references in the Senate debate on § 8 (b)(1)(A) to an intent to impose the same prohibitions on unions that applied to employers as regards restraint and coercion of employees in their exercise of § 7 rights.²⁶ However apposite this parallel might be when applied to organizational tactics, it clearly is inapplicable to the relationship of a union member to his own union. Union membership allows the member a part in choosing the very course of action to which he refuses to adhere, but he has of course no role in employer conduct, and nonunion employees have no voice in the affairs of the union.²⁷

in order to persuade them, but you cannot, by threat of force or threat of economic reprisal, prevent them from exercising their right to work.' As I see it, that is the effect of the amendment." 93 Cong. Rec. 4436, II Leg. Hist. 1206.

His statements in a colloquy with Senator Morse were made in the same context. 93 Cong. Rec. 4436, II Leg. Hist. 1207. We read his "Supplementary Analysis of Labor Bill as Passed" as also referring to coercion of nonmembers of the striking bargaining unit. 93 Cong. Rec. 6859, II Leg. Hist. 1623. That he distinguished members from nonmembers also appears from his statement concerning the section that "its application to labor organizations may have a slightly different implication, but it seems to me perfectly clear that from the point of view of the employee the two cases are parallel." 93 Cong. Rec. 4023, II Leg. Hist. 1028. (Emphasis supplied.)

It is not true that "the sponsors of the section repeatedly announced that it would protect union members from their leaders." Only Senator Taft's statements provide limited support for the proposition.

²⁶ S. Rep. No. 105, 80th Cong., 1st Sess., 50, I Leg. Hist. 456; 93 Cong. Rec. 4025, 4436, II Leg. Hist. 1032, 1207.

²⁷ Cf. statement of Justice Stone in *South Carolina Hwy. Dept. v. Barnwell Bros.*, 303 U. S. 177, 184-185, n. 2:

"State regulations affecting interstate commerce, whose purpose or effect is to gain for those within the state an advantage at the expense of those without, or to burden those out of the state with-

Cogent support for an interpretation of the body of § 8(b)(1) as not reaching the imposition of fines and attempts at court enforcement is the proviso to § 8(b)(1). It states that nothing in the section shall "impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein" Senator Holland offered the proviso during debate and Senator Ball immediately accepted it, stating that it was not the intent of the sponsors in any way to regulate the internal affairs of unions.²⁸ At the very least it can be said that the proviso preserves the rights of unions to impose fines, as a lesser penalty than expulsion, and to impose fines which carry the explicit or implicit threat of expulsion for nonpayment. Therefore, under the proviso the rule in the UAW constitution governing fines is valid and the fines themselves and expulsion for nonpayment would not be an unfair labor practice. Assuming that the proviso cannot also be read to authorize court enforcement of fines, a question we need not reach,²⁹ the fact remains that to inter-

out any corresponding advantage to those within, have been thought to impinge upon the constitutional prohibition even though Congress has not acted. [Citations omitted.]

"Underlying the stated rule has been the thought, often expressed in judicial opinion, that *when the regulation is of such a character that its burden falls principally upon those without the state, legislative action is not likely to be subjected to those political restraints which are normally exerted on legislation where it affects adversely some interests within the state.*" (Emphasis supplied.)

A commentator has noted that "the ballot in a free election is the individual union member's weapon for inducing performance in accordance with his desire." Wellington, *Union Democracy and Fair Representation: Federal Responsibility in a Federal System*, 67 Yale L. J. 1327, 1329 (1958).

²⁸ 93 Cong. Rec. 4272, 4433, II Leg. Hist. 1141, 1200.

²⁹ Our conclusion that § 8(b)(1)(A) does not prohibit the locals' actions makes it unnecessary to pass on the Board holding that the proviso protected such actions.

pret the body of § 8 (b) (1) to apply to the imposition and collection of fines would be to impute to Congress a concern with the permissible means of enforcement of union fines and to attribute to Congress a narrow and discrete interest in banning court enforcement of such fines. Yet there is not one word of the legislative history evidencing any such congressional concern. And as we have pointed out, a distinction between court enforcement and expulsion would have been anomalous for several reasons. First Congress was operating within the context of the "contract theory" of the union-member relationship which widely prevailed at that time. The efficacy of a contract is precisely its legal enforceability. A lawsuit is and has been the ordinary way by which performance of private money obligations is compelled. Second, as we have noted, such a distinction would visit upon the member of a strong union a potentially more severe punishment than court enforcement of fines, while impairing the bargaining facility of the weak union by requiring it either to condone misconduct or deplete its ranks.

There may be concern that court enforcement may permit the collection of unreasonably large fines.³⁰ However, even were there evidence that Congress shared this

³⁰ The notification by Local 248 to its strikebreaking employees that each day they continued to work might constitute a separate offense punishable by a fine of \$100 was sent only to members of Local 248, not those of Local 401, and only during one of the two strikes called by Local 248. The notification was sent only to those employees who had already decided to work during the strike. Most important, no inference can be drawn from that notification that court enforcement would be the means of collection. Therefore, at least under the proviso, if not the body of § 8 (b) (1), such notification would not be an unfair labor practice. It is not argued that the fines for which court enforcement was actually sought were unreasonably large.

concern,²¹ this would not justify reading the Act also to bar court enforcement of reasonable fines.

The 1959 Landrum-Griffin amendments, thought to be the first comprehensive regulation¹ by Congress of the conduct of internal union affairs,²² also negate the reach given § 8 (b)(1)(A) by the majority *en banc* below. "To be sure, what Congress did in 1959 does not establish what it meant in 1947. However, as another major step in an evolving pattern of regulation of union conduct, the 1959 Act is a relevant consideration. Courts may properly take into account the later Act when asked to extend the reach of the earlier Act's vague language to the limits which, read literally, the words might permit."

²¹ Senator Wiley's reference in a speech after § 8 (b)(1) was passed to \$20,000 fines for crossing a picket line was not directed to the section. 93 Cong. Rec. 5000, II Leg. Hist. 1471.

²² It has been noted that the state courts, in reviewing the imposition of union discipline, find ways to strike down "discipline [which] involves a severe hardship." Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049, 1078 (1951).

It is suggested that reading § 8 (b)(1) to allow court enforcement of fines adds a "new weapon to the union's economic arsenal," and is inconsistent with the mood of Congress to curtail the powers of unions. The question here, however, is not whether Congress gave to unions a new power, but whether it eliminated, without debate, a power which the unions already possessed.

²³ In 1957, in *Machinists v. Gonzales*, 356 U. S. 617, 620, we said: "[T]he protection of union members in their rights as members from arbitrary conduct by unions and union officers has not been undertaken by federal law, and indeed the assertion of any such power has been expressly denied."

See Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 852:

"The act is the first major step in the regulation of the internal affairs of labor unions. It expands the national labor policy into the area of relations between the employees and the labor union. Previously national policy was confined to relationships between management and union."

Labor Board v. Drivers Local Union, 362 U. S. 274, 291-292. In 1959 Congress did seek to protect union members in their relationship to the union by adopting measures to insure the provision of democratic processes in the conduct of union affairs and procedural due process to members subjected to discipline. Even then, some Senators emphasized that "[I]n establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents." S. Rep. No. 187, 86th Cong., 1st Sess., 7. The Eighty-sixth Congress was thus plainly of the view that union self-government was not regulated in 1947. Indeed, that Congress expressly recognized that a union member may be "fined, suspended, expelled, or otherwise disciplined," and enacted only procedural requirements to be observed. 29 U. S. C. § 411(a)(5). Moreover, Congress added a proviso to the guarantee of freedom of speech and assembly disclaiming any intent "to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution" 29 U. S. C. § 411(a)(2).

The 1959 provisions are significant for still another reason. We have seen that the only indication in the debates over § 8(b)(1)(A) of a reach beyond organizational tactics which restrain or coerce nonmembers was Senator Taft's concern with arbitrary and undemocratic union leadership. The 1959 amendments are addressed to that concern. The kind of regulation of internal union affairs which Senator Taft said protected stockholders of a corporation, and made necessary a "right of protest against arbitrary powers which have been exercised by some of the labor union leaders,"²⁴ is embodied in the 1959 Act. The requirements of adherence to democratic

²⁴ 93 Cong. Rec. 4023, II Leg. Hist. 1028.

principles, fair procedures and freedom of speech apply to the election of union officials and extend into all aspects of union affairs.²² In the present case the procedures followed for calling the strikes and disciplining the recalcitrant members fully comported with these requirements, and were in every way fair and democratic. Whether § 8 (b)(1)(A) proscribes arbitrary imposition of fines, or punishment for disobedience of a fiat of a union leader, are matters not presented by this case, and upon which we express no view.

Thus this history of congressional action does not support a conclusion that the Taft-Hartley prohibitions against restraint or coercion of an employee to refrain from concerted activities included a prohibition against the imposition of fines on members who decline to honor an authorized strike and attempts to collect such fines. Rather, the contrary inference is more justified in light of the repeated refrain throughout the debates on § 8 (b) (1)(A) and other sections that Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulations to affect a member's employment status.

III.

The collective bargaining agreements with the locals incorporate union security clauses. Full union membership is not compelled by the clauses: an employee is required only to become and remain "a member of the union to the extent of paying his monthly dues" The majority *en banc* below nevertheless regarded full membership to be "the result not of individual voluntary choice but of the insertion of [this] union security

²² 29 U. S. C. §§ 411-415, 431 (c), 461-464, 481-482. Significantly, the Landrum-Griffin amendments expressly rendered it unlawful for any union "to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled . . ." under that Act. 29 U. S. C. § 529.

provision in the contract under which a substantial minority of the employees may have been forced into membership." 358 F. 2d, at 660. But the relevant inquiry here is not what motivated a member's full membership but whether the Taft-Hartley amendments prohibited disciplinary measures against a full member who crossed his union's picket line. It is clear that the fined employees involved in these cases enjoyed full union membership. Each executed the pledge of allegiance to the UAW constitution and took the oath of full membership. Moreover, the record of the Milwaukee County Court case against Benjamin Natzke discloses that two disciplined employees testified that they had fully participated in the proceedings leading to the strike. They attended the meetings at which the secret strike vote and the renewed strike vote were taken. It was upon this and similar evidence that the Milwaukee County Court found that Natzke "had by his actions become a member of the union for all purposes" Allis-Chalmers offered no evidence in this proceeding that any of the fined employees enjoyed other than full union membership. We will not presume the contrary. Cf. *Machinists v. Street*, 367 U. S. 740, 774.²¹ Indeed, it is and has been Allis-Chalmers' position that the Taft-

²¹ In *Machinists v. Street*, we held that employees who were members of a union under a union security agreement authorized by the Railway Labor Act, had a right to relief against a union using their dues payments for political purposes. We said at 774:

"Any remedies, however, would properly be granted only to employees who had made known to the union officials that they do not desire their funds to be used for political causes to which they object. The safeguards of [the Act] . . . were added for protection of dissenters' interest, but dissent is not to be presumed—it must affirmatively be made known to the union by the dissenting employee Thus we think that only those who have identified themselves as opposed to political uses of their funds are entitled to relief in this action."

Hartley prohibitions apply whatever the nature of the membership. Whether those prohibitions would apply if the locals had imposed fines on members whose membership was in fact limited to the obligation of paying monthly dues is a question not before us and upon which we intimate no view.³⁷

The judgment of the Court of Appeals is

Reversed.

³⁷ Under § 8 (a) (3) the extent of an employee's obligation under a union security agreement is "expressly limited to the payment of initiation fees and monthly dues 'Membership' as a condition of employment is whittled down to its financial core." *Labor Board v. General Motors Corp.*, 373 U. S. 734, 742.

Not before us is the question of the extent to which union actions for enforcement of disciplinary penalties is pre-empted by federal labor law. Compare *Machinists v. Gonzales*, 356 U. S. 617; *Plumbers' Union v. Borden*, 373 U. S. 690.

SUPREME COURT OF THE UNITED STATES

No. 216.—OCTOBER TERM, 1966.

National Labor Relations
Board, Petitioner,
v.
Allis-Chalmers Manufac-
turing Company et al.

On Writ of Certiorari to the
United States Court of
Appeals for the Seventh
Circuit.

[June 12, 1967.]

MR. JUSTICE WHITE, concurring.

It is true that § 8 (b)(1)(A) makes it an unfair labor practice for a union to restrain or coerce any employees in the exercise of § 7 rights, but the proviso permits the union to make its own rules with respect to acquisition and retention of membership. Hence, a union may expel to enforce its own internal rules, even though a particular rule limits the § 7 rights of its members and even though expulsion to enforce it would be a clear and serious brand of "coercion" imposed in derogation of those § 7 rights. Such restraint and coercion Congress permitted by adding the proviso to § 8 (b)(1)(A). Thus, neither the majority nor the dissent in this case questions the validity of the union rule against its members crossing picket lines during a properly called strike, nor the propriety of expulsion to enforce the rule. Section 8 (b)(1)(A), therefore, does not bar *all* restraint and coercion by a union to prevent the exercise by its members of their § 7 rights. "Coercive" union rules are enforceable at least by expulsion.

The dissenting opinion in this case, although not questioning the enforceability of coercive rules by expulsion from membership, questions whether fines for violating such rules are enforceable at all, by expulsion or otherwise. The dissent would at least hold court collection

of fines to be an unfair labor practice, apparently for the reason that fines collectible in court may be more coercive than fines enforceable by expulsion. My Brother BRENNAN, for the Court, takes a different view, reasoning that since expulsion would in many cases—certainly in this one involving a strong union—be a far more coercive technique for enforcing a union rule and for collecting a reasonable fine than the threat of court enforcement, there is no basis for thinking that Congress, having accepted expulsion as a permissible technique to enforce a rule in derogation of § 7 rights, nevertheless intended to bar enforcement by another method which may be far less coercive.

I do not mean to indicate, and I do not read the majority opinion otherwise, that every conceivable internal union rule which impinges upon the § 7 rights of union members is valid and enforceable by expulsion and court action. There may well be some internal union rules which on their face are wholly invalid and unenforceable. But the Court seems unanimous in upholding the rule against crossing picket lines during a strike and its enforceability by expulsion from membership. On this premise I think the opinion written for the Court is the more persuasive and sensible construction of the statute and I therefore join it, although I am doubtful about the implications of some of its generalized statements.

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MR. JUSTICE BLACK, whom MR. JUSTICE DOUGLAS, MR. JUSTICE HARLAN, and MR. JUSTICE STEWART join, dissenting.

The United Automobile Workers went on a lawful economic strike against the Allis-Chalmers Manufacturing Co. Some union members, refusing to engage in the concerted strike activities, crossed the picket lines and continued to work for Chalmers. The right to refrain from engaging in such "concerted activities" is guaranteed all employees by the language of § 7 of the National Labor Relations Act, and § 8 (b)(1)(A) of the Act makes it an unfair labor practice for a union to "restrain or coerce" employees in their exercise of their § 7 rights. Despite these emphatic guarantees of the Act, the union filed charges against the employees and imposed fines against those who had crossed its picket lines to go back to work. Though the proviso to § 8 (b)(1)(A) preserves the union's "right . . . to prescribe its own rules with respect to the . . . retention of membership therein," the union did not attempt to exercise its right under the proviso to expel the disciplined members when they refused to pay the fines. Instead, it brought legal proceedings in state courts to compel the payment of the fines. The Court now affirms the Labor Board's action in refusing to find the union guilty of an unfair labor practice under § 8 (b)(1)(A) for fining its members because they

crossed its picket lines. I cannot agree and, therefore, would affirm the judgment of the Court of Appeals which set aside the Labor Board's order.

I.

In determining what the Court here holds, it is helpful to note what it does not hold. Since the union resorted to the courts to enforce its fines instead of relying on its own internal sanctions such as expulsion from membership, the Court correctly assumes that the proviso to § 8 (b)(1)(A) cannot be read to authorize its holding. Neither does the Court attempt to sustain its holding by reference to § 7 which gives employees the right to refrain from engaging in concerted activities. To be sure, the Court in characterizing the union-member relationship as "contractual" and in emphasizing that its holding is limited to situations where the employee is a "full member" of the union, implies that by joining a union an employee gives up or waives some of his § 7 rights. But the Court does not say that a union member is without the § 7 right to refrain from participating in such concerted activity as an economic strike called by his union. Such a holding would be clearly unwarranted even by resort to the legislative history of the 1947 addition to § 7 of "the right to refrain from any and all of such activities." According to Senator Taft, that phrase was added by the Conference Committee to "make the prohibition contained in section 8 (b)(1) apply to coercive acts of unions against employees who did not wish to join or *did not care to participate in a strike or a picket line.*" 93 Cong. Rec. 6859, II Leg. Hist. 1623. (Emphasis added.)

With no reliance on the proviso to § 8 (b)(1)(A) or on the meaning of § 7, the Court's holding boils down to this: a court-enforced reasonable fine for nonparticipation in a strike does not "restrain or coerce" an employee in the

exercise of his right not to participate in the strike. In holding as it does, the Court interprets the words "restrain or coerce" in a way directly opposed to their literal meaning, for the Court admits that fines are as coercive as penalties imposed on citizens for the nonpayment of taxes. Though Senator Taft, in answer to charges that these words were ambiguous, said their meaning "is perfectly clear," 93 Cong. Rec. 4021, II Leg. Hist. 1025, and though any union official with sufficient intelligence and learning to be chosen as such could hardly fail to comprehend the meaning of these plain, simple English words, the Court insists on finding an "inherent imprecision" in these words. And that characterization then allows the Court to resort to "what legislative materials there are." In doing so, the Court finds three significant things: (1) there is "not a single word" to indicate that § 8(b)(1)(A) was intended to apply to "traditional internal union discipline in general, or disciplinary fines in particular"; (2) the "repeated refrain" running through the debates on the section was that Congress did not intend to impose any limitations on the "internal affairs of unions"; (3) the Senators who supported the section were primarily concerned with union coercion during organizational drives and with union violence in general.

Even were I to agree with the Court's three observations about the legislative history of § 8(b)(1)(A), I do not think they alone justify disregarding the plain meaning of the section, and it seems perfectly clear to me that the Court does not think so either. The real reason for the Court's decision is its policy judgment that unions, especially weak ones, need the power to impose fines on strikebreakers and to enforce those fines in court. It is not enough, says the Court, that the unions have the power to expel those members who refuse to participate in a strike or who fail to pay fines imposed on them for such

failure to participate; it is essential that weak unions have the choice between expulsion and court-enforced fines, simply because the latter are more effective in the sense of being more punitive. Though the entire mood of Congress in 1947 was to curtail the power of unions, as it had previously curtailed the power of employers, in order to equalize the power of the two, the Court is unwilling to believe that Congress intended to impair "the usefulness of labor's cherished strike weapon."¹ I cannot agree with this conclusion or subscribe to the Court's unarticulated premise that the Court has power to add a new weapon to the union's economic arsenal whenever the Court believes that the union needs that weapon. That is a job for Congress, not this Court.

II.

Though the Court recognizes that a union fine is in fact coercive, it seeks support for its holding—that court-enforced fines are not prohibited by § 8(b)(1)(A)—by reference to the proviso which authorizes a union to prescribe its own rules with respect to the retention of membership. The Court first assumes that the proviso protects the union's right to expel members for the express purpose of discouraging them from going to work. From that assumption the Court then suggests that "at the very least . . . the proviso protects the rights of unions to impose fines, as a lesser penalty than expulsion

¹ Those members of the Senate who opposed § 8(b)(1)(A) shared the Court's concern that it would impair the effectiveness of strikes. To that concern, Senator Taft replied:

"I can see nothing in the pending measure which . . . would in someway outlaw strikes. It would outlaw threats against employees. It would not outlaw anybody striking who wanted to strike. It would not prevent anyone using the strike in a legitimate way All it would do would be to outlaw such restraint and coercion as would prevent people from going to work if they wished to go to work." 93 Cong. Rec. 4436, II Leg. Hist. 1207

and to impose fines which carry the . . . threat of expulsion for nonpayment." And finally, departing a third step further from the literal language of the proviso, the Court arrives at its holding that Congress could not have meant to preclude unions from the alternative of judicially enforcing fines.

Contrary to the Court, I am not at all certain that a union's right under the proviso to prescribe rules for the retention of membership includes the right to restrain a member from working by trying him on the vague charge of "conduct unbecoming a union member" and fining him for exercising his § 7 right of refusing to participate in a strike, even though the fine is only enforceable by expulsion from membership. It is one thing to say that Congress did not wish to interfere with the union's power, similar to that of any other kind of voluntary association, to prescribe specific conditions of membership. It is quite another thing to say that Congress intended to leave unions free to exercise a court-like power to try and punish members with a direct economic sanction for exercising their right to work. Just because a union might be free, under the proviso, to expel a member for crossing a picket line does not mean that Congress left unions free to threaten their members with fines. Even though a member may later discover that the threatened fine is only enforceable by expulsion, and in that sense a "lesser penalty," the direct threat of a fine, to a member normally unaware of the method the union might resort to for compelling its payment, would often be more coercive than a threat of expulsion.

Even on the assumption that § 8(a)(1)(A) permits a union to fine a member as long as the fine is only enforceable by expulsion, the fundamental error of the Court's opinion is its failure to recognize the practical and theoretical difference between a court-enforced fine, as here, and a fine enforced by expulsion or less drastic

intra-union means.² As the Court recognizes, expulsion for nonpayment of a fine may, especially in the case of a strong union, be more severe than judicial collection of the fine. But, if the union membership has little value and if the fine is great, then court-enforcement of the fine may be more effective punishment, and that is precisely why the Court desires to provide weak unions with this alternative to expulsion, an alternative which is similar to a criminal court's power to imprison defendants who fail to pay fines.

In this case, each strikebreaking employee was fined from \$20 to \$100, and the union initiated a "test case" in state court to collect the fines. In notifying the employees of the charges against them, however, the union warned them that each day they crossed the picket line and went to work might be considered a separate offense punishable by a fine of \$100. In several of the cases, the strikes lasted for many months. Thus, although the union here imposed minimal fines for the purpose of its "test case," it is not too difficult to imagine a case where the fines will be so large that the threat of their imposition will absolutely restrain employees from going to work during a strike. Although an employee might be willing to work even if it meant the loss of union membership, he would have to be well paid indeed to work at the risk that he would have to pay his union \$100 a day for each day worked. Of course, as the Court suggests, he might be able to defeat the union's attempt at judicial enforcement of the fine by showing it was "unreasonable" or that he was not a "full-member" of the union, but few employees would have the courage or the financial means to be willing to take that risk. Cf. *Ex parte Young*, 209 U. S. 123.

² See generally Comment, 115 U. Pa. L. Rev. 47 (1966); 80 Harv. L. Rev. 683 (1967).

The Court disposes of this tremendous practical difference between court-enforced and union-enforced fines by suggesting that Congress was not concerned with "the permissible means of enforcement of union fines" and that court-enforcement of fines is a necessary consequence of the "contract theory" of the union-member relationship. And then the Court cautions that its holding may only apply to court enforcement of "reasonable fines." Apparently the Court believes that these considerations somehow bring reasonable court-enforced fines within the ambit of "internal union affairs." There is no basis either historically or logically for this conclusion or the considerations upon which it is based. First, the Court says that disciplinary fines were commonplace at the time the Taft-Hartley Act was passed, and thus Congress could not have meant to prohibit these "traditional internal discipline" measures without saying so. Yet there is not one word in the authorities cited by the Court that indicates that court enforcement of fines was commonplace or traditional in 1947, and, to the contrary, until recently unions rarely resorted to court enforcement of union fines.² Second, Congress' unfamiliarity in 1947 with this recent innovation and consequent failure to make any distinction between union-enforced and court-enforced fines cannot support the conclusion that Congress was unconcerned with the "means" a union uses to enforce its fines. Congress was expressly concerned with enacting "rules of the game" for unions to abide by. 93 Cong. Rec. 4436, II Leg. Hist. 1206. As noted by the Labor Board the year after § 8 (b) (1) (A)

² These authorities are cited at note 9 of the Court's opinion. One of them notes that the union's "discipline power has its own practical limitations" simply because the union's ultimate sanction at that time was limited to expulsion. Summers, *Disciplinary Powers of Unions*, 3 Ind. & Lab. L. Rev. 483, 487 (1950). That practical limitation is today removed by the Court's holding.

was passed, "In that Section, Congress was aiming at means, not at ends." *Perry Norvell Co.*, 80 N. L. R. B. 225, 239. At the very least Congress intended to preclude a union's use of certain means to collect fines. It is clear, as the Court recognizes, that Congress in enacting § 8 (b) (2) was concerned with insulating an employee's job from his union membership. If the union here had attempted to enforce the payment of the fines by persuading the employer to discharge the nonpaying employees or to withhold the fines from their wages, it would have clearly been guilty of an unfair labor practice under § 8 (b) (2).⁴ If the union here, operating under a union-shop contract, had applied the employees' dues to the satisfaction of the fines and then charged them extra dues, that, under Board decisions, would have been a violation of § 8 (b) (1) (A), since it jeopardized the employees' jobs.⁵ Yet here the union has resorted to equally effective outside assistance to enforce the payment of its fines, and the Court holds that within the ambit of "internal union discipline." I have already pointed to the impact that \$100 per day court-enforced fines may have on an employee's job—they would totally discourage him from working at all—and I fail to see how court enforcement of union fines is any more "internal" than employer enforcement. The undeniable fact is that the union resorts to outside help when it is not strong enough to enforce obedience internally. And even if the union does not resort to outside help but uses threats of physical violence by its officers or other members to compel payment of its fines,

⁴ See, e. g., *NLRB v. Bell Aircraft Corp.*, 206 F. 2d 235 (collective bargaining agreement between employer and union provided that employer could not promote employee who had disciplinary charges pending against him by union).

⁵ See, e. g., *Associated Home Builders of Greater Green Bay*, 145 N. L. R. B. 1775, remanded on other grounds, 352 F. 2d 745.

I do not doubt that this too would be a violation of § 8 (b)(1)(A).

Finally, the Court attempts to justify court-enforcement of fines by comparing it to judicial enforcement of the provisions of an ordinary commercial contract—a comparison which, according to the Court's own authority, is simply "a legal fabrication."⁶ The contractual theory of union membership, at least until recently, was a fiction used by the courts to justify judicial intervention into union affairs to protect employees, not to help unions. I cannot believe that Congress intended the effectiveness of § 8 (b)(1)(A) to be impaired by such a fiction,⁷ or that it was content to rely on the state courts' use of this fiction to protect members from union coercion.⁸ Particularly is that so where the "contract" between the union and the employee is the involuntary

⁶ "The contract of membership is . . . a legal fabrication What are the terms of the contract? The constitutional provisions, particularly those governing discipline, are so notoriously vague that they fall short of the certainty ordinarily required of a contract. The member has no choice as to terms but is compelled to adhere to the inflexible ones presented. Even then, the union is not bound, for it retains the unlimited power to amend any terms at any time. . . . In short, membership is a special relationship. It is as far removed from the main channel of contract law as the relationship created by marriage"

Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049, 1055-1056 (1951).

⁷ Although the Court states that Congress was operating within the context of the "contract theory," I have been unable to find any reference to this theory in the legislative history, even by the opponents to curtailing union power. When Senator Pepper suggested that the section should not apply to union members because they elect their own leaders, Senator Taft rejected that premise as a frequent fiction. See p. 12, *infra*.

⁸ Congress was, indeed, primarily, concerned with the kind of coercion state courts were unable to cope with. 93 Cong. Rec. 4016, 4024, 11 Leg. Hist. 1018, 1031.

product of a union shop. Although the Court of Appeals held that to be the case here, the Court takes the surprising position that "what motivated" the full union member to make the "contract" is immaterial. I doubt that even an ordinary commercial contract is enforceable against a party who entered into it involuntarily. But I am certain that Congress did not intend to insulate union coercion from the literal language of § 8 (b)(1)(A) merely because the union has secured a "full" but involuntary contract from those it desires to coerce.

III.

While the Court may be correct in saying that resort to legislative history is proper here, it is certainly not justified in ignoring the plain meaning of § 8 (b)(1)(A) on the basis of the inconclusive legislative history it points to. In the first place, "what legislative materials there are dealing with § 8 (b)(1)(A)" are only the remarks of a few Senators during the debate on the floor. The section was added on the floor after the bill had cleared the Senate Committee. There were no debates on the section in the House, there were no committee reports on the section, and debate in the Senate was brief. In the second place, though the Court deems the words "restrain or coerce" to be "imprecise," it somehow is willing to attribute a magical quality of clarity to the refrain "internal affairs of unions." The Court is thus willing to attribute more certainty and careful consideration to a refrain used by several Senators in a heated debate in response to certain criticism than it is to the words repeatedly used in the Act itself.

The repeated refrain of the debates on § 8 (b)(1)(A) was actually that it was aimed to secure "equality . . . between employers and employees."⁹ Over and over

⁹ 93 Cong. Rec. 4021, II Leg. Hist. 1025. See generally 93 Cong. Rec. 4432-4436; II Leg. Hist. 1199-1207.

again, Senator Taft and others emphasized that if a union indulges in conduct that would be an unfair labor practice on the part of an employer, it too should be guilty of an unfair labor practice.¹⁰ Although the Court deems "this parallel . . . clearly . . . inapplicable to the relationship of a union member to his own union," it is clear that the sponsors of § 8 (b)(1)(A) did not think so. Several times, Senator Pepper tried to persuade Senator Taft that there was a difference between an employee's relation to his employer and his relation to his union. On each occasion, Senator Taft replied, "I cannot see any difference." 93 Cong. Rec. 4022, II Leg. Hist. 1026, 1027. When Senator Pepper asked whether the words "restrain or coerce" might have a different application to unions than to employers, Senator Taft replied:

"The Board has been defining those words for 12 years, ever since it [the Act] came into existence. Its application to labor organizations may have a slightly different implication, but it seems to me perfectly clear that from the point of view of the employee the two cases are *parallel*. . . . If there is anything clear in the development of labor union history in the past 10 years it is that more and more *labor union employees* have come to be subject to the orders of labor union leaders. The bill provides for the right of protest against arbitrary powers which have been exercised by some of the labor union leaders. Certainly it seems to me that if we are willing to accept the principle that employees are entitled to the same protection against labor union leaders as against employers, then I can see no reasonable objection to the amendment" 93 Cong. Rec. 4023, II Leg. Hist. 1028. (Emphasis added.)

¹⁰ 93 Cong. Rec. 4016, II Leg. Hist. 1018; 93 Cong. Rec. 4021, II Leg. Hist. 1025; 93 Cong. Rec. 4023, II Leg. Hist. 1028.

When Senator Pepper replied that Senator Taft was overlooking "the fact that the workers elect their own officers, whereas they do not elect their employers,"—precisely the fact that the Court points to in finding the parallel between unions and employers inapplicable—Senator Taft replied:

"I think it fair to say that in the case of many of the unions, the employee has a good deal more of an opportunity to select his employer than he has to select his labor-union leader; and even if he has that opportunity . . . the man who is elected may have been voted against by various of the employees who did not desire to have that particular man elected as the union leader. In such cases the very fact that they did vote against that man is often used later by the union as a means of coercing such employees, and in some cases the union expels them from the union or subjects them to treatment which interferes with their rights as American citizens." 93 Cong. Rec. 4023, II Leg. Hist. 1028. (Emphasis added.)

And finally, when Senator Pepper charged that the "amendment is an effort to protect the workers against their own leaders," Senator Taft did not deny it.¹¹ He clearly stated that the bill was designed to warn unions, "that they do not have the right to interfere with or coerce employees, either *their own members* or those outside of the union." 93 Cong. Rec. 4025, II Leg. Hist. 1032. (Emphasis added.)

It is true that the Senate sponsors of § 8 (b)(1)(A) were primarily concerned with coercive organization tactics of unions and that most of the examples of abuse referred to in the debates concerned threats of violence

¹¹ 93 Cong. Rec. 4023, II Leg. Hist. 1029. Senator Taft merely responded that the section protects nonunion employees as well as union members.

by unions against nonmember employees. But to say that § 8(b)(1)(A) covers *only* coercive organizational tactics, which the Court comes very close to doing, is to ignore much of the legislative history. It is clear that § 8(b)(1)(A) was intended to protect union as well as nonunion employees from coercive tactics of unions, and such protection would hardly be provided if the section applied only to organizational tactics. Also, it is clear that Congress was much more concerned with nonviolent economic coercion than with threats of physical violence. As Senator Ball, who introduced the section, put it: "But we are less concerned here with actual acts of violence than we are with threats" ¹² And Senator Taft noted: "There are plenty methods of coercion short of actual physical violence." ¹³ Examples were given of cases where unions threatened to double the dues of employees who waited until later to join. ¹⁴ It is difficult to see how fining a member is less coercive than doubling his dues, or how the one is "within the ambit of internal union affairs" and the other is not. After the bill was passed, in commenting on some of the abuses it was designed to correct, Senator Wiley said there are "instances in which unions . . . have imposed fines upon their members up to \$20,000 because they crossed picket lines—dared to go to the place of employment." ¹⁵ Twice during the debate, Senator Taft emphatically stated that the section guarantees employees who wished to work during a strike the right to do so. ¹⁶ Though on neither occasion did he expressly

¹² 93 Cong. Rec. 4017, II Leg. Hist. 1020.

¹³ 93 Cong. Rec. 4024, II Leg. Hist. 1031.

¹⁴ 93 Cong. Rec. 4017, II Leg. Hist. 1020; 93 Cong. Rec. 4433; II Leg. Hist. 1200.

¹⁵ 93 Cong. Rec. 5000, II Leg. Hist. 1471.

¹⁶ See n. 1, *supra*; statement by Senator Taft quoted in n. 25 of the Court's opinion.

limit his examples to organizational strikes, the Court reads them as having such a limited reference.¹⁷ Once again the Court utilizes ambiguous, extemporaneous legislative comments to circumvent the unambiguous language of a carefully drafted statute. Congress certainly knew how to limit expressly the applicability of the section to organizational coercion, if it intended to do so.¹⁸

The Court finds the strongest support for its position in statements of Senator Ball when he accepted the proviso proposed by Senator Holland. When Senator Holland observed, "Apparently it is not intended by the sponsors of the amendment to affect *at least that part of the internal administration* which has to do with the admission or the expulsion of members,"¹⁹ Senator Ball replied, "It was never the intention of the sponsors of the pending amendment to interfere with the internal affairs or organization of unions."²⁰ From this statement by Senator Ball accepting the proviso the Court unjustifiably implies an intent to broaden it. First, there is no reason to suppose that Senator Ball was referring to any "part" of internal affairs other than that to which Senator Holland had referred. Second, the sponsors of the section repeatedly announced that it would protect union members from their leaders, and that protection would be impossible if the section did not to some extent interfere with the internal affairs of unions. As Senator Wiley said, "None of these provisions interferes *unduly* with union affairs, *except to the extent necessary to protect the individual rights of employees.*"²¹ Third, the Court recognizes—without hold-

¹⁷ See n. 25 of the Court's opinion.

¹⁸ See, e. g., § 8 (b) (4) (B).

¹⁹ 93 Cong. Rec. 4271, II Leg. Hist. 1139 (emphasis added).

²⁰ 93 Cong. Rec. 4272, II Leg. Hist. 1141.

²¹ 93 Cong. Rec. 5001, II Leg. Hist. 1472 (emphasis added).

ing—that the section may protect union members from “arbitrary” action of union leaders. However, it is difficult to understand how the arbitrariness or nonarbitrariness of a fine determines whether it is within the scope of “internal union affairs.”²²

What the Court does today is to write a new proviso to § 8 (b)(1)(A): “this paragraph shall not impair the right of a labor organization nonarbitrarily to restrain or coerce its members in their exercise of § 7 rights.” Nothing in the legislative history supports the creation of this new proviso.

IV.

The Court seeks further support for its holding by reference to the fact that the *19 Landrum-Griffin*

²² The NLRB has itself recognized that a union “fine is by nature coercive.” In *Local 138, Operating Engineers*, 148 N. L. R. B. 679, and *H. B. Roberts, Business Manager of Local 925, Operating Engineers*, 148 N. L. R. B. 674, enforced — U. S. App. D. C. —, 350 F. 2d 427, the Board held § 8 (b)(1)(A) prohibited a union from fining members who violated an internal union rule against filing charges with the NLRB. The Board concluded that “the imposition of a fine by a labor organization upon a member who files charges with the Board does restrain and coerce that member in the exercise of his right to file charges. The union’s conduct is no less coercive where the filing of the charges is alleged to be in conflict with an internal union rule or policy and the fine is imposed allegedly to enforce that internal policy.” *Local 138*, 148 N. L. R. B., at 682. In the present case, the Board distinguished *Local 138* and *Roberts* on the ground that the union rules involved there were “beyond the competence of the union to enforce” and were “not the legitimate concern of a union.” 149 N. L. R. B. 67, 69. My Brother WHITE seems to take a similar position in resting his concurrence on the Court’s holding that the union rule against crossing a picket line is “valid.” But neither Congress’ aim in § 8 (b)(1)(A) of proscribing certain means used to accomplish legitimate ends, nor the Court’s view that Congress intended no interference with internal union affairs, would allow the application of the section to depend on the Board’s or this Court’s views of whether a particular internal union rule is “valid” or not.

amendments were "thought to be the first comprehensive regulation by Congress of the conduct of internal affairs of unions." And the Court thinks that to construe § 8(b)(1)(A) according to its literal language to prohibit fines "is to say that Congress preceded the Landrum-Griffin amendments with an even more pervasive regulation of the internal affairs of unions."²³ But again the Court fails to distinguish between court-enforced fines and fines enforced by the traditional method of expulsion. Although both kinds of fines are coercive, I have already indicated that the proviso to § 8(b)(1)(A) may preserve the union's right to impose fines which are enforceable only by expulsion and that expulsion was the common mode of enforcing fines at the time the section was adopted. If one assumes that the only fines prohibited by the section are court-enforced fines, then the section was not a pervasive regulation of union internal affairs. If court-enforcement of fines is within the ambit of internal union affairs, which I doubt, then those affairs were only incidentally regulated by a flat prohibition of this seldom-used method of union discipline. If the common forms of union discipline—expulsion and fines enforceable by expulsion—were not prohibited or regulated by Taft-Hartley, then Landrum-Griffin was indeed the first comprehensive regulation of them.

V.

The union here had a union security clause in its contract with Chalmers. That clause made it necessary for

²³ Although the Landrum-Griffin Act might be resorted to for the purpose of determining the limits of "vague language" in the Taft-Hartley Act, it should not be used, as the Court here uses it, to deprive employees of rights unequivocally granted them by the earlier Act. Section 103 of the Landrum-Griffin Act, 73 Stat. 523 (1959), 29 U. S. C. § 413, expressly provides: "Nothing contained in this title shall limit the rights and remedies of any member of a labor organization under any . . . Federal law"

all employees, including the ones involved here, to pay dues and fees to the union. But § 8(a)(3) and § 8(b)(3) make it clear that "Congress intended to prevent utilization of union security agreements for any purpose other than to compel payment of union dues and fees." *Radio Officers' Union v. Labor Board*, 347 U. S. 17, 41. If the union uses the union security clause to compel employees to pay dues, characterizes such employees as members, and then uses such membership as a basis for imposing court-enforced fines upon those employees unwilling to participate in a union strike, then the union security clause is being used for a purpose other than "to compel payment of union dues and fees." It is being used to coerce employees to join in union activity in violation of § 8(b)(3).

The Court suggests that this problem is not present here, because the fined employees failed to prove they enjoyed other than full union membership, that their role in the union was not in fact limited to the obligation of paying dues. For several reasons, I am unable to agree with the Court's approach. Few employees forced to become "members" of the union by virtue of the union security clause will be aware of the fact that they must somehow "limit" their membership to avoid the union's court-enforced fines. Even those who are brash enough to attempt to do so may be unfamiliar with how to do it. Must they refrain from doing anything but paying dues, or will signing the routine union pledge still leave them with less than full membership? And finally, it is clear that what restrains the employee from going to work during a union strike is the union's threat that it will fine him and collect those fines from him in court. How many employees in a union shop whose names appear on the union's membership rolls will be willing to ignore that threat in the hope that they will later be able to convince the Labor Board or

the state court that they were not full members of the union? By refusing to decide whether § 8 (b) (1) (A) prohibits the union from fining an employee who does nothing more than pay union dues as a condition to retaining his job in a union shop, the Court adds coercive impetus to the union's threat of fines. Today's decision makes it highly dangerous for an employee in a union shop to exercise his § 7 right to refrain from participating in a strike called by a union in which he is a member by name only.

VI.

The National Labor Relations Act, as originally passed and amended from time to time, is the work product of draftsmen skilled by long experience in labor affairs. These draftsmen thoroughly understood labor legislation terminology, especially the oft-used words "restrain or coerce." Sections 7 and 8 together bespeak a strong purpose of Congress to leave workers wholly free to determine in what concerted labor activities they will engage or decline to engage. This freedom of workers to go their own way in this field, completely unhampered by pressures of employers or unions, is and always has been a basic purpose of the labor legislation now under consideration. In my judgment it ill behooves this Court to strike so diligently to defeat this unequivocally declared purpose of Congress, merely because the Court believes that too much freedom of choice for workers will impair the effective power of unions. Cf. *Vaca v. Sipes*, — U. S. — (dissenting opinion). A court-enforced fine is certainly coercive, certainly affects the employee's job, and certainly is not a traditional method of internal union discipline. When applied by a union to an employee who has joined it as a condition to obtaining employment in a union shop, it defeats the provisions of the Act designed to prevent union security clauses

from being used for purposes other than to compel payment of dues. In such a situation it cannot be justified on any theory that the employee has contracted away or waived his § 7 rights.

Where there is clear legislative history to justify it, courts often decline to follow the literal meaning of a statute. But this practice is fraught with dangers when the legislative history is at best brief, inconclusive, and ambiguous. This is precisely such a case, and I dissent because I am convinced that the Court has ignored the literal language of § 8 (b)(1)(A) in order to give unions a power which the Court, but not Congress, thinks they need.